VOL

I

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Volume I

TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1961

No. 94

NATIONAL LABOR RELATIONS BOARD,
PETITIONER,

vs.

FLORIDA CITRUS CANNERS COOPERATIVE

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

PETITION FOR CERTIORARI FILED MAY 17, 1961
CERTIORARI GRANTED OCTOBER 9, 1961

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SUPREME COURT OF THE UNITED STATES

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No. 94

NATIONAL LABOR RELATIONS BOARD, PETITIONER,

VS.

FLORIDA CITRUS CANNERS COOPERATIVE

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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PETITION FOR ENFORCEMENT OF AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD

UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 18,186

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

versus

FLORIDA CITRUS CANNERS COOPERATIVE,
Respondent.

To the Honorable, the Judges of the United States Court of Appeals for the Fifth Circuit:

The National Labor Relations Board, pursuant to the National Labor Relations Act, as amended (61 Stat. 136, 29 U. S. C., Secs. 151, et seq., as amended by 72 Stat. 945), hereinafter called the Act, respectfully petitions this Court for the enforcement of its Order against Respondent, Florida Citrus Canners Cooperative, and its officers, representatives, agents, successors, and assigns, Case No. 12-CA-307.

In support of this petition, the Board respectfully shows:

(1) Respondent is a Florida corporation engaged in business in the State of Florida where the unfair labor practices occurred. This Court therefore has jurisdiction of

this petition by virtue of Section 10 (e) of the National Labor Relations Act, as amended.

(2) Upon due proceedings had before the Board in said matter, the Board on October 14, 1959, duly stated its findings of fact and conclusions law, and issued an Order directed to the Respondent, and its officers, representatives, agents, successors, and assigns. On the same date, the Board's Decision and Order was served upon Respondent by sending a copy thereof postpaid, bearing Government frank, by registered mail, to Respondent's counsel.

(3) Pursuant to Section 10 (e) of the National Labor Relations Act, as amended, and pursuant to Rule 38 (1) of this Court, the Board is certifying and filing with this Court a certified list of all documents, transcripts of testimony, exhibits and other material comprising the entire record of the proceeding before the Board upon which the said Order was entered, which includes pleadings, testimony and evidence, findings of fact, conclusions of law, and the Order of the Board sought to be enforced.

WHEREFORE, the Board prays this Honorable Court that it cause notice of the filing of this petition and transcript to be served upon Respondent and that this Court take jurisdiction of the proceedings and of the questions determined therein and make and enter upon the pleadings, testimony and evidence, and the proceeding set forth in the transcript and upon the Order made thereupon a decree enforcing in whole said Order of the Board and requiring Re-

spondent, and its officers, representatives, agents, successors, and assigns, to comply therewith.

(Signed) Thomas J. McDermott
Thomas J. McDermott
Associate General Counsel
NATIONAL LABOR
RELATIONS BOARD

Dated at Washington, D. C.
this 20th day of January, 1960

ORDER TO FILE PETITION

Filed: Jan. 25, 1960

In The United States Court of Appeals
For The Fifth Circuit.

No. 18,186

National Labor Relations Board,
Petitioner,

versus

Florida Citrus Canners Cooperative,
Respondent.

A Petition for Enforcement of an Order of the National Labor Relations Board made on October 14, 1959, in the proceeding known upon the records of the Board as Case No. 12-CA-307 having been presented to this Court;

IT IS ORDERED that said Petition be filed and the case docketed as of January 25, 1960, and,

IT IS FURTHER ORDERED that the National Labor Relations Board file with the Clerk, a certified copy of the transcript of proceedings, or in lieu thereof, a certified list of all the documents, transcripts of testimony, exhibits and other material comprising the record of the proceeding before the National Labor Relations Board,

in the above entitled matter, within forty days from this date as required by Rule 38, as amended.

(Signed) EDWARD W. WADSWORTH
Clerk of the United States Court
of Appeals for the Fifth Circuit.

ANSWER TO A PETITION FOR ENFORCEMENT OF AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD

(Number and Title Omitted)

TO THE HONORABLE, THE JUDGES OF THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT:

COMES NOW, FLORIDA CITRUS CANNERS COOPERATIVE, Respondent in the above-styled cause, by its undersigned attorneys, and for Answer to said Petition heretofore filed herein, as required by Rule 38 (2) of the Rules of the United States Court of Appeals for the Fifth Circuit, respectfully show this Honorable Court:

1. The findings of fact of the National Labor Relations Board in its Order dated October 14, 1959, are not supported by the evidence;

2. The said Board's findings of fact in said Order are contrary to the evidence;

3. The Order of the said Board is not supported by the evidence;

4. The Order of the said Board is contrary to the law;

5. The said Board erred in issuing the complaint against the Respondent herein;

6. The said Board erred in denying Respondent's Motion to Dismiss said complaint;

7. The Order of the said Board is not supported by a preponderance of the testimony taken by the Board;

8. The findings of the said Board in its Order with respect to questions of fact are not supported by substantial evidence on the record considered as a whole.

9. The evidence considered on the record as a whole does not support a finding that the Respondent failed or refused to bargain collectively with the Union as the exclusive representative of said employees.

10. The evidence considered on the record as a whole does not support a finding that the strike was motivated by any purpose other than to enforce the economic bargaining demands of the union.

11. The evidence considered on the record as a whole does not support a finding that the strikers were illegally replaced and discharged.

12. The evidence considered on the record as a whole does not support a finding that the Respondent illegally evicted or attempted to evict striking employees from company housing.

WHEREFORE, Respondent prays that this Honorable Court deny said Petition of the said Board in each and every respect and set aside the Order of said Board in its entirety.

HAMILTON & BOWDEN
(Signed) By O. R. T. BOWDEN
(O. R. T. Bowden)

Address of Counsel:

Hamilton & Bowden
1056 Hendricks Avenue
Jacksonville 7, Florida

CERTIFICATE OF SERVICE

I hereby certify that I have this 25th day of January, 1960, served a copy of the foregoing Answer by First Class United States mail upon the following:

Thomas J. McDermott, Esq.
Associate General Counsel
National Labor Relations Board
Washington 25, D. C.

(Signed) O. R. T. BOWDEN
(O. R. T. Bowden)

A true copy
Test: EDWARD W. WADSWORTH
Clerk, U. S. Court of Appeals, Fifth Circuit
/s/ By LOUIS A. CAZES
Deputy
New Orleans, Louisiana, Feb. 1, 1960
(SEAL)

CERTIFIED LIST OF THE
NATIONAL LABOR RELATIONS BOARD

United States Court of Appeals
For The Fifth Circuit

No. 18,186

National Labor Relations Board,
Petitioner,

versus

Florida Citrus Canners Cooperative,
Respondent.

The National Labor Relations Board by its Executive Secretary, duly authorized by Section 102.92, Rules and Regulations of the National Labor Relations Board - Series 7, hereby certifies that the list set forth below constitutes a full and accurate transcript of the entire record of a proceeding had before said Board and known upon its records

as Case No. 12-CA-307. Such transcript includes the pleadings and testimony and evidence upon which the order of the Board in said proceeding was entered, and includes also the findings and order of the Board.

VOLUME I — Exhibits introduced in evidence

GENERAL COUNSEL'S EXHIBITS

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*General Counsel's exhibits 1-A thru 1-R are contained in Volume III.

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3. Copy of Decision and Order issued by the National Labor Relations Board on October 14, 1959 ..... 1 - 10

IN TESTIMONY WHEREOF, the Executive Secretary of the National Labor Relations Board, being thereunto duly authorized as aforesaid, has hereunto set his hand and affixed the seal of the National Labor Relations Board in

the city of Washington, District of Columbia, this 29th day of February, 1960.

(Signed) Frank M. Kleiler
Frank M. Kleiler
Executive Secretary
NATIONAL LABOR
RELATIONS BOARD

(SEAL)

CHARGE AGAINST EMPLOYER

United States of America
National Labor Relations Board

Where a charge is filed by a labor organization, or an individual or group acting on its behalf, a complaint based upon such charge will not be issued unless the charging party and any national or international labor organization of which it is an affiliate or constituent unit have complied with section 9 (f), (g), and (h) of the National Labor Relations Act.

INSTRUCTIONS. — File an original and 4 copies of this charge with the NLRB regional director for the region in which the alleged unfair labor practice occurred or is occurring.

DO NOT WRITE IN THIS SPACE

Case No.
12-CA-307

Date Filed
1-14-58

Compliance Status Checked By:
V.L.A.

1. Employer Against Whom Charge Is Brought
Name of Employer
Florida Citrus Canners Cooperative

Number of Workers Employed
850

Address of Establishment (Street and number, city, zone, and State)
Lake Wales, Florida

Type of Establishment (Factory, mine, wholesaler, etc.)
Citrus Processer

Identify principal product or service
All types citrus products

The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8 (a), subsections (1) and (5) of the National Labor
(List subsections)
Relations Act, and these unfair labor practices are unfair labor practices affecting commerce within the meaning of the act.

2. Basis of the Charge (Be specific as to facts, names, addresses, plants involved, dates, places, etc.)

On or about December 18, 1957, and thereafter, the employer refused to bargain collectively with the undersigned Union, a labor organization chosen by a majority of its employees.

By these and other acts and conduct, the employer interferred with, restrained and coerced its employees in the exercise of their rights, as guaranteed in Section 7 of the Act.

3. Full Name of Party Filing Charge (if labor organization, give full name, including local name and number)
Cannery, Citrus Workers, Drivers, Warehousemen and Allied Employees, Local 173, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America.

4. Address (Street and number, city, zone, and State)
P. O. Box 548 (Ariana Hotel), Auburndale, Florida.

Telephone No.
Woodlong 71219

5. Full Name of National or International Labor Organization of Which It Is an Affiliate or Constituent Unit (To be filled in when charge is filed by a labor organization)
International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America

6. Address of National or International, if any (Street and number, city, zone, and State)
25 Louisiana Avenue, N. W., Washington, D. C.

Telephone No.
Sterling 30525

7. Declaration

I declare that I have read the above charge and that the statements therein are true to the best of my knowledge and belief.

(Signed) By C. J. Hardee, Jr.
(Signature of representative or person filing charge)
Attorney
(Title, if any)

January 14, 1958
(Date)

Willfully false statements on this charge can be punished by fine and imprisonment (U. S. Code, Title 18, Section 80)

January 15, 1958

Florida Citrus Canners Cooperative
Lake Wales
Florida

Re: Case No. 12-CA-307

Gentlemen:

This will serve to advise you that a charge has been filed by the representative or person shown in the "DECLARATION" of the charge, a copy of which is enclosed, alleging that an unfair labor practice has been committed in violation of the Labor Management Relations Act.

The staff member to whom the case has been assigned will be in touch with you at an early date. Meanwhile, I would appreciate receiving from you by return mail (as well as the charging party) a description of the facts and circumstances as you know them concerning the allegations as outlined in this charge.

Please address any correspondence directly to this office, referring to the case number shown above.

Yours very truly,
(Signed) HAROLD A. BOIRE
Harold A. Boire
Regional Director

REGISTERED MAIL
RETURN RECEIPT
REQUESTED

cc: Local 173, Teamsters
Attn: C. J. Hardee, Jr.
P. O. 548 (Ariana Hotel)
Auburndale, Florida
Registered No. 73579

I certify that I served the above-referred to charge this 16th day by post-paid registered mail on the addressee named above, together with a transmittal letter of which this is true copy.

(Signed) Peggy L. Barron

Subscribed and sworn to before me this 16 day of Jan., 1958

(Signed) Velma L. Adams
Designated Agent

* * * *

(Return Receipt Omitted)

FIRST AMENDED
CHARGE AGAINST EMPLOYER

United States of America
National Labor Relations Board

Where a charge is filed by a labor organization, or an individual or group acting on its behalf, a complaint based upon such charge will not be issued unless the charging party and any national or international labor organization of which it is an affiliate or constituent unit have complied with section 9 (f), (g), and (h) of the National Labor Relations Act.

INSTRUCTIONS. — File an original and 4 copies of this charge with the NLRB regional director for the region in which the alleged unfair labor practice occurred or is occurring.

DO NOT WRITE IN THIS SPACE

Case No.
12-CA-307

Date Filed
3-13-58

Compliance Status Checked By:
V.L.A.

1. Employer Against Whom Charge Is Brought
Name of Employer
Florida Citrus Canners Cooperative

Number of Workers Employed
850

Address of Establishment (Street and number, city, zone, and State)
Lake Wales, Florida

Type of Establishment (Factory, mine, wholesaler, etc.)
Citrus Processer

Identify principal product or service
Citrus

The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8 (a), subsections (1) and (3) and (5) of the National Labor Relations Act, and these unfair labor practices are unfair labor practices affecting commerce within the meaning of the act.
(List subsections)

2. Basis of the Charge (Be specific as to facts, names, addresses, plants involved, dates, places, etc.)

On or about July 14, 1957 and thereafter, the employer refused and does now refuse to bargain collectively with the undersigned Union, a labor organization chosen by a majority of its employees, in a unit appropriate for the purposes of collective bargaining.

On January 19, 1958, and various dates thereafter the employer discharged employees because of their membership in and activity on behalf of the labor organization named below.

By these and other acts and conduct, the employer interferred with, restrained and coerced its employees in the exercise of their rights, as guaranteed in Section 7 of the Act.

3. Full Name of Party Filing Charge (if labor organization, give full name, including local name and number)
   Cannery, Citrus Workers, Drivers, Warehousemen and Allied Employees, Local 173, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America.

4. Address (Street and number, city, zone, and State)
   P. O. Box 548
   Auburndale, Florida

Telephone No.
   Woodlong 71219

5. Full Name of National or International Labor Organization of Which It Is an Affiliate or Constituent Unit (To be filled in when charge is filed by a labor organization)
   International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America

6. Address of National or International, if any (Street and number, city, zone, and State)
   25 Louisiana Avenue, N. W., Washington, D. C.

Telephone No.
   Sterling 30525

7. Declaration

I declare that I have read the above charge and that the statements therein are true to the best of my knowledge and belief.

(Signed) By David F. Wingate
(Signature of representative or person filing charge)
Business Representative
(Title, if any)

March 10, 1958
(Date)

Willfully false statements on this charge can be punished by fine and imprisonment (U. S. Code, Title 18, Section 80)

* * * *

(Letter and Return Receipt Omitted)

COMPLAINT AND NOTICE OF HEARING

(Number and Title Omitted)

It having been charged by International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Citrus, Cannery, Food Processing and Allied Workers, Drivers, Warehousemen and Helpers Local No. 173, that Florida Citrus Canners Cooperative has engaged in, and is now engaging in, certain unfair labor practices

affecting commerce, as set forth and defined in the National Labor Relations Act, as amended, 61 Stat. 136, 29 U.S.C., Supp. I, Sec. 141, *et seq.*, hereinafter referred to as the Act, the General Counsel of the National Labor Relations Board, on behalf of the Board, by the Regional Director for the Twelfth Region, designated by the Board's Rules and Regulations, Series 7, as amended, Section 102.15, hereby issues this complaint and alleges as follows:

1.

Florida Citrus Canners Cooperative, hereinafter referred to as Respondent, has its principal office and place of business located in Lake Wales, Florida, and since January, 1934, it has been, and is now, a cooperative duly organized under and existing by virtue of the laws of the State of Florida.

2.

The Respondent processes fruit and, in the course and conduct of its business, it annually sells and ships fruit valued at an amount in excess of $100,000 outside the State of Florida.

3.

Copies of the charge and of the first amended charge were duly served by registered mail on January 17, 1958, and March 17, 1958, respectively.

4.

International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Citrus, Cannery, Food Processing and Allied Workers, Drivers, Warehousemen and Helpers Local No. 173, hereinafter referred to as the Union, is a labor organization within the meaning of Section 2 (5) of the Act.

5.

All production and maintenance employees, including truck drivers, electrical workers, plant checkers and floorladies' helpers, but excluding all office clerical employees, new construction and installation employees, professional and technical employees, guards, watchmen, scale operators and supervisors as defined in the Act, employed in the Respondent's plant in Lake Wales, Florida, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

6.

On or about January 29, 1957, a majority of the employees of Respondent in the unit described above in paragraph 5, by an election conducted by the Twelfth Regional Office of the National Labor Relations Board, in its case docketed as 12-RC-11, designated or selected the Union as their representative for the purposes of collective bargaining with Respondent.

7.

At all times since February 6, 1957, the Union has been the certified representative for the purposes of collective bargaining of a majority of the employees in said unit, and, by virtue of Section 9 (a) of the Act, has been, and is now, the exclusive representative of all the employees in said unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment.

8.

On or about July 14, 1957, and at all times thereafter, Respondent refused, and continues to fail and refuse, to bargain collectively with the Union as the exclusive representative of the employees in the unit discribed above in paragraph 5, as evidenced by the following acts and conduct, *inter alia:*

(a) Dilatory and stalling tactics pursued with the purpose and intention of avoiding its statutory obligation to meet and confer with the Union for the purposes of collective bargaining;

(b) Withdrawal of concessions previously made to the Union during the course of collective bargaining negotiations;

(c) Refusal to negotiate at the scheduled bargaining meeting held on December 18, 1957;

(d) Refusal, on or about December 18, 1957, to agree in writing to substantive contract provisions which were the subject of prior negotiated agreement with the Union, while at the same time falsely claiming that the parties were farther apart than they had ever been;

(e) Failing and refusing to accompany its wage offer of January 4th with any substantive contract proposals following approximately ten months of surface bargaining;

(f) Sponsorship of, and assistance in the circulation of, a petition among its employees in the unit described in paragraph 5 hereof to get rid of the Union as their collective bargaining representative;

(g) Withdrawal of recognition of the Union as the statutory bargaining representative of its employees on February 17, 1958, and its continued refusal thereafter to recognize or bargain with the Union as the collective bargaining representative of its employees in the unit described in paragraph 5 hereof;

(h) Announcement on February 20, 1958, of a unilateral wage increase effective retroactively to December 16, 1957;

(i) Unilateral grant to its employees on March 13, 1958, of a revised Blue Cross Shield plan which is more beneficial to the employees than the one previously in effect;

(j) Solicitation of withdrawals from the Union and the abandonment of strike activity;

(k) Informing individual employees that Respondent would not sign any contract with the Union.

9.

On or about January 17, 1958, Respondent's employees ceased work concertedly and went on strike.

10.

The strike of Respondent's employees, referred to in paragraph 9, was caused by the Respondent's failure and refusal to bargain in good faith, as evidenced by its conduct described in paragraphs 8 (a), (b), (c), (d) and (e) above.

11.

The strike f Respondent's employees, referred to in paragraph 9 hereof, has been prolonged by the Respondent's further failure and refusal to bargain collectively in good faith, as evidenced by its conduct described in paragraphs 8 (f), (g), (h) and (i) above.

12.

Respondent, by its officers, agents, and representatives, did discharge its employees listed on Appendix A, which is attached hereto and by reference made a part hereof, and at all times since such dates it has refused and does now refuse to employ its employees listed on Appendix A.

13.

Respondent, by its officers, agents, and representatives, has served its employees (or their spouses), who are listed in Appendix B, which is attached hereto and by reference made a part hereof, with notices or formal requests that they vacate houses which are owned by the Respondent, and Respondent is continuing its efforts to evict said employees.

14.

Respondent has engaged in and is engaging in the conduct stated in paragraphs 12 and 13 hereof for the reason that the employees joined or assisted the Union, or engaged in the strike referred to in paragraph 10 hereof, or engaged in other concerted activities for the purpose of collective bargaining or other mutual aid or protection.

15.

Respondent, by its officers, agents, or supervisory employees, has engaged in interrogation of employees concerning union activities, made threats of economic reprisal if they assisted the Union or engaged in Union activities; has promised benefits conditioned on the employees refraining from engaging in union or concerted activities for the purpose of self-organization; has promised benefits conditioned upon the employees ceasing participation in a strike which commenced at Respondent's plant on January 17, 1958; has promised benefits conditioned upon the elimination of the Union as the collective bargaining representative of the employees in the bargaining unit described in

paragraph 5 hereof; has granted a unilateral wage increase and made a unilateral change in its employee hospitalization plan, in the following respects, *inter alia:*

(a) During the month of January, 1958, the exact date thereof not being known, Foreman W. H. Kelly warned an employee to abandon the strike which had commenced at Respondent's plant on January 17, 1958, and threatened the employee with economic reprisal if he did not abandon the strike and return to work;

(b) M. A. Stephenson, Production Manager, informed an employee that the Respondent would never sign a contract with the Union, and suggested that the employee start an effort to get the Union decertified, and impliedly promised benefits to the employees upon decertification of the Union;

(c) C. B. Cannon, Superintendent of the Respondent's juice plant, informed an employee that Respondent would not sign any contract with the Union, and impliedly promised that Respondent would grant employee benefits if the Union were decertified;

(d) Gray Nolan, during the month of January, 1958, threatened employees with discharge if they participated in the strike which had commenced January 17, 1958;

(e) During the month of January, 1958, the exact date thereof not being known, Foreman Robert Hall offered an employee benefits if he would refrain from participating in union activity and interrogated said employee regarding union activities;

(f) Foreman Byrd, during the month of January, 1958, the exact date thereof not being known, solicited an employee to refrain from engaging in union activity; and

(g) Night Superintendent Victor Bacus, during the month of January, 1958, the exact date thereof not being known, conveyed to an employee an offer of benefits to the employees generally if they got rid of the Union as their collective bargaining representative.

16.

By the acts and conduct described in paragraph 8 above, pursued in derogation of the Union's statutory status described in paragraph 7, the Respondent engaged in and is now engaging in unfair labor practices within the meaning of Section 8 (a) (5) of the Act.

17.

By the acts described above in paragraphs 12 and 13, carried out for the reasons set forth in paragraph 14, Respondent did discriminate, and is now discriminating, in regard to the hire or tenure, or terms or conditions of employment of the employees referred to above in paragraphs 12 and 13, thereby discouraging membership in the Union, and Respondent thereby did engage in, and is now engaging in, unfair labor practices within the meaning of Section 8 (a) (3) of the Act.

18.

By the acts described above in paragraphs 12 and 13, for the reasons stated in paragraph 14, and by the acts stated in paragraphs 8 and 15, and by each of said acts, Respondent did interfere with, restrain and coerce, and is interfering with, restraining and coercing, its employees in the exercise of the rights guaranteed in Section 7 of the Act, and thereby did engage in, and is engaging in, unfair labor practices within the meaning of Section 8 (a) (1) of the Act.

19.

The activities of Respondent described in this complaint tend to lead to labor disputes and affect the free flow of commerce within the meaning of Sections 2 (6) and (7) of the Act.

PLEASE TAKE NOTICE that on the 11th day of June, 1958, at 10:00 a.m., in the City Court Room, City Hall, Lake Wales, Florida, a hearing will be conducted before a duly designated Trial Examiner of the National Labor Relations Board on the allegations set forth in the above complaint, at which time and place you will have the right to appear in person, or otherwise, and give testimony.

You are further notified that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, you shall file with the undersigned Regional Director, acting in this matter as agent of the National Labor Relations Board, an original and four (4) copies of an answer to said complaint within ten (10) days from the service thereof and

that unless you do so all the allegations in the complaint shall be deemed to be admitted to be true and may be so found by the Board.

WHEREFORE, the General Counsel of the National Labor Relations Board, on behalf of the Board, has caused this Complaint and Notice of Hearing to be issued and signed by the Regional Director for the Twelfth Region on this 16th day of May, 1958.

(Signed) HAROLD A. BOIRE
Harold A. Boire,
Regional Director
National Labor Relations Board
112 East Cass Street
Tampa 2, Florida

(SEAL)

APPENDIX A

Name of Employee	*Date of Discharge*
Oradee Acree	1-27-58
Annie Allen	1-21-58
Mrs. Helen Ayers	2- 3-58
Robert Ayers	1-27-58
W. L. Bailey	2- 3-58
Mrs. Ada Adoila Baker	2- 3-58
Mose Ballard	1-20-58
D. J. Barfield	1-20-58
Mrs. Beulah Barnett	2- 5-58
Ed Basinger	1-22-58
Agnes Batson	1-21-58
J. B. Batson	1-27-58
Mrs. Lunie Mae Batson	2- 8-58
Mrs. Ruby Grey Bees	2- 3-58
W. G. Bennett	1-21-58
Mrs. Eloise L. Birge	2- 5-58
C. Bishop	1-27-58
Melba M. Blair	2- 5-58
W. A. Bohannon	1-27-58
Sallie Bowen	1-21-58
Tommie Bowen	1-19-58
W. T. Bowman	1-20-58
J. S. Boyett	1-27-58
Mildred Boyett	1-22-58
Mrs. Agnes E. Boyette	2- 3-58
Mrs. Evelyn Louise Boykin	2- 3-58
C. R. Braswell	1-27-58
Irby Brimlow	1-27-58
Mrs. Mable Brimlaw	2- 3-58

W. C. Britt	1-21-58
H. P. Brooker	1-22-58
Mrs. Mattie Mae Brooker	2- 3-58
Carrie B. Brown	2- 3-58
Charlie Brown	1-21-58
Mrs. Susie Caraway Brown	2- 3-58
W. J. Burch	1-27-58
C. D. Burgess	1-27-58
Mrs. Euna Vae Byrd	2- 3-58
Johnson Byrd	1-27-58
Frank Carnley	1-29-58
Roy Carruth	1-27-58
Melvin Carter	1-21-58
Mrs. Sadie E. Cawby	2- 8-58
John Ciszek	1-22-58
Harry S. Clark	1-27-58
Mrs. Lannie L. Clark	2- 5-58
Mrs. Addie P. Clark	2- 3-58
Mrs. Ada Lee Clayborn	2- 3-58
Mrs. Dean Clayborn	2- 3-58
Henry Clayborn	1-21-58
B. G. Clayborne	1-21-58
Gressom Collins	1-22-58
Mrs. Mary Hazel Conner	2- 3-58
Mrs. Eloise Crawford	2- 7-58
J. T. Davis	1-22-58
Clyde Davidson	1-29-58
Mrs. Carthell Day	2- 3-58
Lex Day	1-27-58
Mrs. Thelma Deal	2- 3-58
Mrs. Agnes T. Dice	2- 8-58
Mrs. Rena Mae Dice	1-27-58
Mrs. Mattie Lou Drawdy	2- 3-58

Gerald Driggers	1-27-58
Harold Dunaway	1-19-58
Margaret Dunaway	1-27-58
Daisy Durrance	1-27-58
F. Edenfield	1-21-58
Mrs. J. B. Edmondson	2- 7-58
William Evans	1-21-58
Shelby Ezell	1-27-58
Milton Farabee	2- 3-58
Junior Fillingan	1-22-58
Mrs. Katherine J. Fillingim	2- 3-58
T. J. Fuqua	1-21-58
E. E. Galloway	1-27-58
O. J. Garrett	1-22-58
Bobby Gay	1-22-58
Mrs. Lutie Mae Gilmore	2- 7-58
Newell Godwin	1-27-58
D. R. Goff	1-27-58
Mrs. L. J. Goff	2- 7-58
L. J. Goff	1-27-58
T. W. Granger	1-27-58
W. Grantham	1-27-58
Leonard Gray	1-27-58
Mrs. Ada Griner	2- 8-58
Mrs. Cleo Hagler	2- 5-58
Mary Hale	1-27-58
Mrs. Beatrice Hall	2- 3-58
Christine Hall	1-27-58
J. H. Hall	1-22-58
T. Hall	1-27-58
Robert R. Hammond	1-27-58
Mrs. Ruby Lee Hammond	2- 3-58
E. C. Harbuck	1-27-58

Leroy Harper	1-27-58
B. L. Harrison	1-22-58
Willie E. Harrison	1-27-58
L. Helms	1-27-58
J. W. Hewitt	1-21-58
W. T. Holland	1-20-58
Fred Holly	1-22-58
J. E. Holly	1-27-58
Mrs. Evaline Howze	2- 3-58
Bennie Huggins	1-22-58
Mrs. Mary Dye Huggins	2- 3-58
Raymond Huggins	1-27-58
Allen Hunter	1-27-58
John Hurst	1-21-58
Lois Hutchingson	1-27-58
V. A. Hutchingson	1-27-58
Mrs. Essie Mae Hutto	2- 3-58
Mrs. Annie Lois Jackson	2- 3-58
G. N. Jackson	1-19-58
Miss Hellon Hazel James	2- 3-58
Doyle Johnson	1-21-58
Robert Johnson	1-19-58
Thomas Johnson	1-27-58
Virgie Johnson	1-19-58
Wesley Kilgo	1-27-58
Albert Knight	1-21-58
Burly Knowles	1-27-58
Shelly Kyser	1-27-58
Merlin Land	1-27-58
Alice Lasseter	1-19-58
Mrs. Evie Lasseter	1-27-58
L. T. Lasseter	1-21-58
H. Leatherwood	1-20-58

Hugh L. Lyles	1-19-58
Mrs. Pauline Marshall	2- 3-58
Tom Mathews	1-21-58
Mrs. Allie P. Maxwell	2- 5-58
Estelle McKenney	1-27-58
Hattie Laverne McKinnon	1-27-58
C. L. McLean	1-21-58
Jay Dee McLeod	1-27-58
T. R. Mears	1-27-58
Lillie Meyer	1-21-58
Mary Juanita Meyer	2- 3-58
Mrs. Elsie Mitchell	2- 5-58
Mrs. Etta Monday	2- 3-58
Mrs. Lilly L. Moore	2- 7-58
Mack Moore	1-27-58
Mrs. Mary Ruth Moreland	2- 3-58
Dora Nemans	1-22-58
Curtis D. Newmans	1-27-58
Billy Nobles	1-21-58
E. T. Norris	1-21-58
James G. Oliver	1-19-58
Mrs. Lommie O'Neal	2- 5-58
J. H. Owen	1-29-58
W. W. Owens	1-20-58
John W. Pabst	1-27-58
Mrs. Elizabeth D. Payne	2- 3-58
Earnest Peavy	1-27-58
Stanley Pelton	1-21-58
Paul Pence	2- 8-58
Mrs. Verna Pence	1-27-58
E. R. Peterson	1-20-58
C. R. Pickles	1-22-58
H. L. Pickles	1-27-58

Mrs. H. L. Pickles	2- 5-58
J. D. Pitts	1-22-58
Fred Pope	1-22-58
Mrs. Edna L. Price	2- 7-58
Elmo Raines	1-27-58
Mrs. Fannie V. Raines	2- 3-58
Mrs. Bertie Mae Register	2- 3-58
Joseph M. Revels	2- 8-58
Hardie Rhoden	1-29-58
W. H. Richardson, Jr.	1-20-58
C. W. Robbins	1-27-58
Benton Roberts	1-21-58
A. J. Sanders	1-27-58
R. M. Scroggins	1-27-58
T. Shepard, Jr.	1-27-58
C. R. Shuman	1-21-58
Elie Sikes	2- 8-58
Zelma Sikes	1-22-58
J. H. Sims	1-27-58
W. F. Sims	1-21-58
Doris Singletary	1-27-58
W. Slocumb	1-21-58
Mrs. Annie Murray Smith	2- 3-58
Alene Spivey	1-27-58
Joe Spivey	1-27-58
Leroy Stanford	1-21-58
H. D. Steedley	1-27-58
Alice Stern	1-27-58
T. M. Stern	1-20-58
Mrs. Nettie Stinson	2- 8-58
Fred Stoudemire	2- 3-58
Daniel Sturgis	1-27-58
J. L. Sturgis	1-27-58

John Tadlock	1-27-58
P. L. Tate	2- 3-58
L. G. Temples	1-27-58
Beamon Tew	1-20-58
Mrs. Mittie Thompson	2- 5-58
W. A. Thompson	1-27-58
A. P. Tucker	1-27-58
M. C. Tucker	1-27-58
Mrs. Yules W. Tucker	2- 8-58
J. S. Underwood	2- 8-58
John Walker	1-27-58
Mrs. Leana F. Walker	2- 8-58
Algerine Ward	1-27-58
Mrs. Vera Mae Ward	2- 3-58
Clifton Waters	1-22-58
Mrs. Marie Waters	2- 3-58
Mrs. Vada M. Watson	1-20-58
Mrs. Alice Loraine Weaver	2- 3-58
Mrs. Thelma L. Wheeler	2- 5-58
Charles Widner	1-27-58
Mrs. Betty Y. Wiggins	2- 5-58
Mrs. N. D. Wilkinson	1-27-58
A. V. Williams	1-22-58
Mrs. Maude Williams	2- 8-58
Mrs. Myrl B. Williams	2- 5-58
S. E. Williams	1-27-58
D. R. Wyrosdick	1-21-58
Mrs. Janette L. Wyrosdick	2- 5-58
John Wyrosdick	1-22-58
E. M. Yeatman	1-27-58
Mrs. Recy Young	2- 3-58
Alice Zorn	1-22-58
W. H. Zorn	1-21-58

APPENDIX B

Johnson Byrd
O. J. Garrett
James H. Hall
E. C. Harbuck
Estelle McKinney
J. W. Montgomery
James Oliver
Lois Pickles
Charlie Sherman
Vada Watson

* * * *

(Affidavit of Service Omitted)

ANSWER

(Number and Title Omitted)

Comes now the Respondent, Florida Citrus Canners Co-operative, by its undersigned counsel and for answer to the complaint filed herein, thereto answering says:

1. That it denies each and every material allegation as contained in the preamble of said complaint.

2. That it admits the allegations as contained in Paragraphs 1, 3, 5, 6, 9 and 13 of said complaint.

3. That it admits the material allegations contained in Paragraph 2 of said complaint except to explain that the Respondent ships processed fruit and juices rather than fruit as charged in the complaint.

4. That Respondent is without knowledge to the facts contained in Paragraph 4 of said complaint and demands that the Board be held strict proof thereof.

5. Respondent denies each and every material allegation as contained in Paragraphs 8, 10, 11, 12, 14, 15, 16, 17, 18 and 19 of said complaint and demands that the Board be held to strict proof thereof.

6. And for answer to Paragraph 7 the Respondent admits the union was certified on February 6, 1957 as the representative of the employees in the unit for the purpose of collective bargaining; however, the Respondent denies that the union is now the representative of a majority of the employees in said unit.

WHEREFORE, having fully answered said complaint the Respondent moves that the complaint be dismissed.

Dated at Jacksonville, Florida this 22nd day of May, A.D. 1958.

HAMILTON & BOWDEN

(Signed) By O. R. T. BOWDEN
(O. R. T. Bowden)
Attorney for Respondent

Address of Counsel:

Hamilton & Bowden
401 Smith Building
Jacksonville 2, Florida

CERTIFICATE OF SERVICE

I certify that I have this day mailed a copy of the foregoing to International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, Citrus, Cannery, Food Processing and Allied Workers, Drivers, Warehousemen & Helpers Local No. 173, P. O. Box 548, Auburndale, Florida, and C. J. Hardee, Jr., Esq., 308 Tampa Street, Tampa, Florida.

(Signed) O. R. T. BOWDEN
O. R. T. Bowden

BILL OF PARTICULARS

(Number and Title Omitted)

Comes now the Respondent, Florida Citrus Canners Cooperative, and moves the Trial Examiner designated to hear and rule upon this Motion, to require the General Counsel of the National Labor Relations Board or the Regional Director in and for the 12th Region of the Board, to furnish the Respondent herein with a Bill of Particulars in respect to the complaint filed herein, so as to allow Respondent to properly prepare its defense:

1. State what bargaining concessions were withdrawn during collective bargaining sessions as alleged in Paragraph 8 (b) of said complaint.

2. State in what manner the Respondent sponsored and assisted in the circulation of a petition among its employees as alleged in Paragraph 8 (f) of said complaint.

3. State in what manner the Respondent solicited withdrawals from the union as alleged in Paragraph 8 (j) of said complaint.

4. Name individual employees Respondent informed that Respondent would not sign any contract with the union and agents of Respondent responsible for said statements as alleged in Paragraph 8 (k) of said complaint.

5. State the names and circumstances of Respondent's refusal to employ former employees listed in Appendix "A" as alleged in Paragraph 12 of said complaint.

6. State the name of supervisory employees of Respondent who interrogated employees concerning union activity and allegedly made threats to them, and the names of employees involved in the allegation of Paragraph 15 of said complaint.

7. Name the employee that Foreman W. H. Kelly warned to abandon the strike as alleged in Paragraph 15 (a) of said complaint.

8. Name the employee that M. A. Stephenson advised that company would never sign a contract with the union as alleged in Paragraph 15 (b) of said complaint.

9. Name the employees that C. B. Cannon informed that the Respondent would not sign any contract with the union and what promise was impliedly made at that time as alleged in Paragraph 15 (c) of said complaint.

10. Name the employees that Gray Nolan threatened with discharge if they participated in the strike as alleged in Paragraph 15 (b) of said complaint.

11. Name the employees and the benefits that Foreman Robert Hall offered benefits to if they would refrain from participating in union activity as alleged in Paragraph 15 (e) of said complaint.

12. Name the employee that Foreman Byrd solicited to refrain from union activity as alleged in Paragraph 15 (1) of said complaint.

13. Name the employee that Victor Bacus conveyed an offer of benefits to employees generally if they got rid of the union as alleged in Paragraph 15 (g) of said complaint.

It is requested that this information be furnished to the Respondent through its counsel before the hearing date which has been set in this matter.

Respectfully submitted this 22nd day of May, A.D. 1958.

HAMILTON & BOWDEN
(Signed) By O. R. T. BOWDEN
(O. R. T. Bowden)
Attorney for Respondent

Address of Counsel:

Hamilton & Bowden
401 Smith Building
Jacksonville 2, Florida

CERTIFICATE OF SERVICE

I certify that I have this day mailed a copy of the foregoing to International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, Citrus, Cannery, Food Processing and Allied Workers, Drivers, Warehousemen & Helpers Local No. 173, P. O. Box 548, Auburndale, Florida, and C. J. Hardee, Jr., Esq., 308 Tampa Street, Tampa, Florida.

(Signed) O. R. T. BOWDEN
O. R. T. Bowden

RESPONSE OF COUNSEL FOR THE GENERAL COUNSEL TO RESPONDENT'S MOTION FOR BILL OF PARTICULARS

(Number and Title Omitted)

Counsel for the General Counsel respectfully submits that Respondent's Motion for a Bill of Particulars and for an order requiring that such Particulars be furnished to Respondent before the hearing date set in this matter (June 11, 1958), should be denied for these reasons:

1. The Complaint, "stating the unfair labor practices," (Rule 102.15) fully meets the requirements of the Board's Rules and Regulations, and affords Respondent more than sufficient basis upon which to draft the Answer it is required to file under Rule 102.20.

2. Further, the Complaint contains sufficient particularity for the preparation of Respondent's defense before trial. In it Respondent is advised "as to the nature of the violations charged, the manner by which [it] had engaged in unfair labor practices, and the approximate time and place at which the illegal acts were committed" *(United Mine Workers of America, District 31,* 95 NLRB 546, 548, enfd. 198 F. 2d 389 (C.A. 4), cert. denied, 344 U. S. 884), clearly "sufficient to acquaint [Respondent] with the charges of the Board and the issues which would be considered at the hearing" *(Lloyd A. Fry Roofing Co.* v. *N.L.R.B.*, 222 F. 2d 938, 940 (C.A. 1), enfg. 109 NLRB 1297, 1314). See also *American National Insurance Co.*, 89 NLRB 185, 191; *Press Wireless*

Mfg. Co., 78 NLRB 166, 168; *Goodyear Aircraft Co.*, 63 NLRB 1340, 1341.

The extreme particularity which Respondent here seeks indicates a misapprehension of the role played by pleadings in cases under the Act. "The sole function of the Complaint is to advise the Respondent of the charges constituting unfair labor practices as defined in the Act * * *. The Act does not require the particularity of pleading of an indictment or information, nor the elements of a cause like a declaration at law or a bill in equity." *N.L.R.B.* v. *Piqua Munising Wood Products Co.*, 109 F. 2d 552, 557 (C. A. 6).

Respondent's purpose, as a reading of the motion plainly discloses, is to impose upon the General Counsel the requirement that it memorialize at this stage of the proceeding all the evidence, including the names of the witnesses, upon which the General Counsel will proceed at the trial, any deviation from which Respondent may claim later as "surprise", while the Respondent would limit itself only to the filing of an Answer which may consist only of general denials.

WHEREFORE, it is respectfully requested that Respondent's motion in all respects be denied.

(Signed) MARGARET L. FASSIG
Margaret L. Fassig
Counsel for the General Counsel

STATEMENT OF SERVICE

I do hereby certify that a copy of the foregoing Response of the General Counsel to Respondent's Motion for Bill of Particulars has been furnished this 26th day of May, 1958 by registered mail to:

Florida Citrus Canners Cooperative
Lake Wales, Florida

International Brotherhood of
Teamsters, Chauffeurs, Warehousemen
& Helpers of America, Citrus, Cannery,
Food Processing and Allied Workers,
Drivers, Warehousemen & Helpers Local No. 173
P. O. Box 548
Auburndale, Florida

and by regular mail to:

O. R. T. Bowden, Esq.
401 Smith Building
Jacksonville, Florida

C. J. Hardee, Jr., Esq.
308 Tampa Street
Tampa, Florida

(Signed) MARGARET L. FASSIG
Margaret L. Fassig
Counsel for General Counsel

AMENDMENT TO COMPLAINT AND NOTICE OF HEARING

(Number and Title Omitted)

A Complaint and Notice of Hearing having issued on May 16, 1958, the General Counsel of the National Labor Relations Board, on behalf of the Board, by the Regional Director for the Twelfth Region, designated by the Board's Rules and Regulations, Series 7, pursuant to Section 102.17 thereof, hereby issues this Amendment to Complaint and Notice of Hearing:

1.

Paragraph 15 is amended to read as follows:

Respondent, by its officers, agents, or supervisory employees, has engaged in interrogation of employees concerning union activities, made threats of economic reprisal if they assisted the union or engaged in union activities; has promised benefits conditioned on the employees refraining from engaging in union or concerted activities for the purpose of self-organization; has promised benefits conditioned upon the elimination of the union as the collective bargaining representative of the employees in the bargaining unit described in paragraph 5 hereof; has granted a unilateral wage increase and made a unilateral change in its employee hospitalization plan, in the following respects, *inter alia:*

(a) During the month of January, 1958, the exact date thereof not being known, Foreman W. H. Kelly warned an

employee to abandon the strike which had commenced at Respondent's plant on January 17, 1958, and threatened the employee with economic reprisal if he did not abandon the strike and return to work;

(b) M. A. Stephenson, Production Manager, during the month of December, 1957 informed an employee that the Respondent would never sign a contract with the union, and suggested that the employee start an effort to get the union decertified, and impliedly promised benefits to the employees upon decertification of the union;

(c) C. B. Cannon, Superintendent of the Respondent's juice plant, in December, 1957 informed an employee that Respondent would not sign any contract with the union, impliedly promised that Respondent would grant employee benefits if the employees rejected the union as their collective bargaining representative; and also threatened employees with discharge for strike participation;

(d) Foreman Gray Nolan, during the month of January, 1958, threatened employees with discharge if they participated in the strike which had commenced January 17, 1958;

(e) During the month of January, 1958, the exact date thereof not being known, Foreman Robert Hall offered an employee benefits if he would refrain from participating in union activity and interrogated said employee regarding union activities;

(f) Foreman Byrd, during the month of January, 1958, the exact date thereof not being known, interrogated an employee regarding his union sympathies and promised benefits to him to refrain from engaging in union activity;

(g) Night Superintendent Victor Backus, during the month of January, 1958, the exact date thereof not being known, conveyed to an employee an offer of benefits to the employees generally if they got rid of the union as their collective bargaining representative, and interrogated another employee as to his position with reference to the union and as to his union activities;

(h) During the month of January, 1958, the exact date thereof not being known, Foreman Jack Miller interrogated employees regarding their union sympathies and possible participation in a strike in Respondent's plant, and threatened reprisal for employee participation in a strike.

2.

Appendix A is amended by adding the following listed employees to the list of dischargees:

Clyde Anderson
Allen E. Bogue
Louie Caldwell
Pearl Clark
Dean Clayborn
Henry L. Clayborn
Richard C. Cluard
Julia Davis
Ralph Dukes
Carl Duncan
J. W. Dunwald
Richard Evans
Calvin Foster
Olive G. Foster
W. H. Fribley
Billy Glissom
Marguerite Goff
Virginia Hall

Inez Harrell
B. L. Harrison
Thomas L. Harper
Sherman Hoover
L. J. Howard
Doyle Johnson
Ruth Johnson
Willie Johnson, Jr.
Wesley Kilgo
Johnnie M. Knowles
S. F. Lassiter
W. G. Lesley
I. D. Lewis
John C. Lewis
Donald E. Love
J. F. McCormick
W. E. McGuire
Alex McKay
Rufus McLeod
Lowell T. Mathews
Mary Montgomery
J. B. Mullins
F. O. Olive
Lommie O'Neal
Marvin Owens
William Owen
B. G. Oxford
Ernest Partin
Carrie Terrell
L. J. Peavy, Jr.
Tom Riley
Sallie Ridgeway
Carl Royal
M. W. Shiver
C. R. Shuman
Wm. E. Slocum
Myrtle Stephenson
E. D. Sterling
George Turner
Leonard Waldrop
Louise Weeks
Melrose Williams
Page Wilson
Louie Woods

3.

PLEASE TAKE NOTICE that on the 11th day of June, 1958, at 10:00 a.m., at the National Guard Armory, Airport, Lake Wales, Florida, a hearing will be conducted before a duly designated Trial Examiner of the National Labor Relations Board on the allegations set forth in the above complaint, at which time and place you will have the right to appear in person, or otherwise, and give testimony.

You are further notified that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, you shall file with the undersigned Regional Director, acting in this matter as agent of the National Labor Relations Board, an original and four (4) copies of an answer to said amended complaint within ten (10) days from the service thereof and that unless you do so all the allegations in the amended complaint shall be deemed to be admitted to be true and may be so found by the Board.

WHEREFORE, the General Counsel of the National Labor Relations Board, on behalf of the Board, has caused this Amendment to Complaint and Notice of Hearing to be issued and signed by the Regional Director for the Twelfth Region on ths 28th day of May, 1958.

(Signed) HAROLD A. BOIRE
Harold A. Boire,
Regional Director
National Labor Relations Board
Twelfth Region
112 East Cass Street
Tampa, Florida

(SEAL)

* * * *

(Affidavit of Service Omitted)

RESPONSE OF RESPONDENT TO GENERAL COUNSEL

(Number and Title Omitted)

Counsel for Respondent respectfully responds to the argument of General Counsel to Respondent's Motion for Bill of Particulars.

Section 10 (b) of the Labor Management Relations Act, 1947, as amended, says among other things, "Any such proceeding shall, so far as practicable, be conducted in accordance with the rules applicable in the district of Civil procedure for the District Courts of the United States adopted by the Supreme Court of the United States * * *". It goes without saying that the use of Motions for Bill of Particulars have historically been used in the District Courts of the United States as well as all state courts. There is nothing new or novel about such motions as to require any explanation here.

The modern trend of Board procedures has been to reduce the amount of time consumed in the trial of such cause as near as possible. It is apparent that if the respondents in these cases are fully apprised of the exact nature of the charges against them as well as the witnesses who will so testify that it will reduce the preparation and the trial itself to an absolute minimum. In fact, it is apparent from the response of the Counsel for the General Counsel that she is attempting to do the very thing which she is afraid would happen if she furnished the

information requested by the Respondent. That is, to attempt to surprise and embarrass the Respondent in the trial and in the preparation of their defense to such charges. It would appear to be logical and proper for the Counsel for the General Counsel to freely state what the position of the General Counsel would be in this case as well as the witnesses who would be used to prove these matters. The Respondent in his defense then would concentrate and would be prepared to defend these charges thereby reducing the trial and time consumed at such trial to a minimum. It was never the thought of Counsel for the Respondent that such trials are entered into for the purpose of establishing new records for continuity or length and that effort should be made to reduce the litigable issues to a minimum. The Respondent of the Counsel for the General Counsel clearly indicates that she is reluctant to furnish facts which she is going to rely upon at a hearing so that the matter will not be decided upon its merits but upon guile, tactical or surprise elements. Cases cited by the Counsel for the General Counsel are not controlling in that each case is decided upon its own merit. Inasmuch as the elements indicate that this instant trial at its best will consume a month or more, it is the thought of the Counsel for the Respondent that every effort should be made to reduce the issues down to a minimum so that all parties at the beginning of the trial shall be fully apprised of the exact nature of the charges that they would encounter.

WHEREFORE, Counsel for the Respondent respectfully requests the Trial Examiner to require the Counsel for

the General Counsel to require the information sought in the Bill of Particulars.

Respectfully submitted this 28th day of May, 1958.

HAMILTON & BOWDEN
(Signed) By O. R. T. BOWDEN
(O. R. T. Bowden)
Attorneys for Respondent

Address of Counsel:

Hamilton & Bowden
401 Smith Building
Jacksonville 2, Florida

CERTIFICATE OF SERVICE

I hereby certify that on this 28th day of May, 1958, a copy of the foregoing Response of Respondent to General Counsel has been mailed to:

International Brotherhood of
Teamsters, Chauffeurs, Warehousemen
& Helpers of America, Citrus, Cannery,
Food Processing and Allied Workers,
Drivers, Warehousemen & Helpers Local
No. 173
P. O. Box 548
Auburndale, Florida

C. J. Hardee, Jr., Esq.
308 Tampa Street
Tampa, Florida

Mr. Harold A. Boire
National Labor Relations Board
Ross Building
112 East Cass Street
Tampa 2, Florida

Mrs. Margaret L. Fassig
National Labor Relations Board
Ross Building
112 East Cass Street
Tampa 2 Florida

(Signed) O. R. T. BOWDEN
O. R. T. Bowden

ANSWER TO AMENDED COMPLAINT

(Number and Title Omitted)

Comes now the Respondent by and through its undersigned counsel and for answer to the Amended Complaint signed herein on May 28, 1958 or to as much thereof as is deemed material and ought to be answered, thereto answering says:

1. That it denies each and every material allegation as contained in Paragraph 15 of said Complaint as amended.

2. And for answer to the Amended Complaint, Paragraph 2, the Respondent admits that said employees listed therein were discharged, but denies each and every other material allegation therein contained.

Respectfully submitted this 29th day of May, A.D., 1958.

FLORIDA CITRUS CANNERS COOPERATIVE
(Signed) By O. R. T. BOWDEN
O. R. T. Bowden
Attorney for Respondent

Address of Counsel:

Hamilton & Bowden
401 Smith Building
Jacksonville 2, Florida

CERTIFICATE OF SERVICE

I hereby certify that I have this 29th day of May, 1958 mailed a copy of the foregoing Answer to Amended Complaint to:

International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, Citrus, Cannery, Food Processing and Allied Workers, Drivers, Warehousemen & Helpers, Local No. 173
P. O. Box 548
Auburndale, Florida

Mr. Harold A. Boire
National Labor Relations Board
Ross Building
112 East Cass Street
Tampa 2, Florida

C. J. Hardee, Jr., Esq.
308 Tampa Street
Tampa, Florida.

(Signed) O. R. T. BOWDEN
O. R. T. Bowden

MOTION TO DISMISS

(Number and Title Omitted)

Comes now the Respondent, Florida Citrus Canners Cooperative, and respectfully moves the Trial Examiner to dismiss the following paragraphs and sections of the Complaint filed herein:

1. Paragraph 8, Sections "f" (j), "k".

2. Paragraph 13.

3. Paragraph 15, and as amended.

4. Paragraph 16.

5. Paragraph 18.

This Motion to Dismiss is made upon the ground that said allegations contained in said paragraphs and sections hereinabove referred to are not lawful in that same are not in compliance with Section 10, "b" of the Labor Management Relations Act, 1947, as amended, which reads as follows:

"Provided, That no complaint shall issue based upon any unfair labor practice occurring more than six months prior to the filing of the charge with the Board and the service of a copy thereof upon the person against whom such charge is made, unless the person aggrieved thereby was prevented from filing such charge by reason of service in the armed forces, in which event the six-month period shall be computed from the day of his discharge."

Respondent shows that no charge has been filed by any person alleging that Respondent committed any of such acts and that no such charge was ever served on Respondent.

WHEREFORE, Respondent moves for the dismissal of the paragraphs and sections of the Complaint referred to above.

Respectfully submitted this 30 day of May, 1958.

FLORIDA CITRUS CANNERS COOPERATIVE
(Signed) By O. R. T. BOWDEN
(O. R. T. Bowden)
Attorney for Respondent

Address of Counsel:

Hamilton & Bowden
401 Smith Building
Jacksonville 2, Florida

CERTIFICATE OF SERVICE

I hereby certify that I have this 30 day of May, 1958 mailed a copy of the foregoing Motion to Dismiss to:

International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, Citrus, Cannery, Food Processing and Allied Workers, Drivers, Warehousemen & Helpers, Local No. 173
P. O. Box 548
Auburndale, Florida

Mr. Harold A. Boire
National Labor Relations Board
Ross Building
112 East Cass Street
Tampa 2, Florida

C. J. Hardee, Jr., Esq.
308 Tampa Street
Tampa, Florida

(Signed) O. R. T. BOWDEN
O. R. T. Bowden

MOTION FOR BILL OF PARTICULARS

(Number and Title Omitted)

Comes now the Respondent, Florida Citrus Canners Cooperative, and moves the Trial Examiner to hear and rule upon this Motion to require the General Counsel of the National Labor Relations Board or the Regional Director in d for the 12th Region of the Board to furnish the Respondent herein with a Bill of Particulars in respect to the Amended Complaint filed herein so as to allow the Respondent to properly prepare its defense.

1. In reference to the Amended Complaint and amended Paragraph 15, name the employees which Foreman Jack Miller interrogated their union sympathies and the questions used during such interrogation.

2. Name the employees involved in the threatened reprisals alleged to have been made by Foreman Jack Miller as alleged in the amended Paragraph 15 of Section (h).

It is requested that this information be furnished to the Respondent through its counsel before the hearing date which has been set in this matter.

Respectfully submitted this 2nd day of June, 1958.

FLORIDA CITRUS CANNERS COOPERATIVE

(Signed) By O. R. T. BOWDEN

O. R. T. Bowden

Attorney for Respondent

Address of Counsel:

Hamilton & Bowden
401 Smith Building
Jacksonville 2, Florida

CERTIFICATE OF SERVICE

I hereby certify that I have this 2nd day of June, 1958 mailed a copy of the foregoing Motion for Bill of Particulars to:

International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, Citrus, Cannery, Food Processing and Allied Workers, Drivers, Warehousemen & Helpers, Local No. 173
P. O. Box 548
Auburndale, Florida

Mr. Harold A. Boire
National Labor Relations Board
Ross Building
112 East Cass Street
Tampa 2, Florida

C. J. Hardee, Jr., Esq.
308 Tampa Street
Tampa, Florida

(Signed) O. R. T. BOWDEN
O. R. T. Bowden

WESTERN UNION

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1958 JUN 4 PM 5:18

HAROLD A. BOIRE, DIRECTOR —
NATIONAL LABOR RELATIONS BOARD TAMPA FLO—

RE: FLORIDA CITRUS CANNERS COOPERATIVE, CASE NO 12-CA-307. RESPONDENTS MOTION FOR BILL OF PARTICULARS IN RESPECT TO AMENDED COMPLAINT ISSUED IN THIS PROCEEDING IS DENIED BECAUSE ALLEGATIONS IN AMENDED COMPLAINT ARE SUFFICIENTLY PARTICULARIZED TO INFORM RESPONDENT OF ISSUES AND CONDUCT CLAIMED TO BE VIOLATIVE OF ACT AND TO ENABLE RESPONDENT TO PREPARE ITS DEFENSE —

LOUIS LIBBIN TRIAL EXAMINER NLRB

WESTERN UNION
OTP A JNDO26 GOVT P D — TDJN PWS WASHINGTON
DC 4 1140 AME —

HAROLD A BOIRE, DIR NATIONAL LABOR —
RELATIONS BOARD TAMPA FLO —

RE: FLORIDA CITRUS CANNERS COOPERATIVE, CASE NO. 12-CA-307. RESPONDENTS MOTION FOR BILL OF PARTICULARS IN RESPECT TO CERTAIN ALLEGATIONS OF COMPLAINT ISSUED IN THIS PROCEEDING IS DENIED BECAUSE ALLEGATIONS ARE

SUFFICIENTLY PARTICULARIZED TO INFORM RESPONDENT OF ISSUES AND CONDUCT CLAIMED TO BE VIOLATIVE OF ACT AND TO ENABLE RESPONDENT TO PREPARE ITS DEFENSE. RESPONDENTS MOTION TO DISMISS CERTAIN ALLEGATIONS OF COMPLAINT FOR ALLEGED FAILURE TO COMPLY WITH SECTION 10 (B) OF ACT IS DENIED BECAUSE (1) NO CONDUCT MENTIONED IN COMPLAINT IS ALLEGED TO HAVE OCCURED MORE THAN 6 MONTHS PRIOR TO THE FILING AND SERVICE OF THE CHARGES UPON WHICH COMPLAINT IS BASED AND (2) THE STATEMENTS CONTAINED IN THE CHARGES ARE SUFFICIENT TO SATISFY REQUIREMENTS OF SECTION 10 (B). N.L.R.B. V. WESTEX BOOT & SHOE CO., 190 F. 2D 12 (C.A. 5); STOCKLEY FOODS, INC. V. N.L.4.R., 193 F. 2D736, 737-738 (C.A. 5). —

LOUIS LIBBIN
TRIAL EXAMINER
NATIONAL LABOR
RELATIONS BOARD

MOTION TO STRIKE

(Number and Title Omitted)

Comes now the Respondent, Florida Citrus Canners Co-operative, by and through its undersigned attorneys and respectfully moves Trial Examiner to strike the following language from the Complaint and Amended Complaint herein filed in the following respects:

1. Paragraph 8 (a) of the original Complaint "Dilatory and stalling tactics."

2. In reference to Paragraph 15 (b) of the original Complaint, strike the word "impliedly."

3. In reference to Paragraph 15 (c), strike the word therefrom "impliedly".

4. In reference to Paragraph 15 (b) as amended in the Amended Complaint, strike therefrom the word "impliedly."

5. In reference to Paragraph 15 (c) as amended in the Amended Complaint, to strike therefrom the word "impliedly".

The above Motion is made upon the ground that said language is pleading of conclusions and not based on any facts. The Respondent further moves that the language in the original Complaint in reference to Paragraph 8 (e) to strike the words "surface bargaining" in that said term is incapable of a legal definition as to what this language means.

Respectfully submitted this 6th day of June, 1958.

FLORIDA CITRUS CANNERS COOPERATIVE
(Signed) By O. R. T. BOWDEN
(O. R. T. Bowden)
Attorney for Respondent

Address of Counsel:

Hamilton & Bowden
401 Smith Building
Jacksonville 2, Florida

CERTIFICATE OF SERVICE

I hereby certify that I have this 6th day of June, 1958 mailed a copy of the foregoing Motion to Strike to:

International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, Citrus, Cannery, Food Processing and Allied Workers, Drivers, Warehousemen & Helpers, Local No. 173
P. O. Box 548
Auburndale, Florida

Mr. Harold A. Boire
National Labor Relations Board
Ross Building
112 East Cass Street
Tampa 2, Florida

C. J. Hardee, Jr., Esq.
308 Tampa Street
Tampa, Florida.

O. R. T. Bowden

IR-405
Lake Wales, Fla.

INTERMEDIATE REPORT

(Number and Title Omitted)

Statement of the Case

This proceeding, brought under Section 10 (b) of the National Labor Relations Act as amended (61 Stat. 136), was heard at Lake Wales, Florida, from June 11 to 20, 1958, pursuant to due notice, and with all parties represented by counsel and participating in the hearing. The complaint, which was issued on May 16, 1958, by the General Counsel

of the National Labor Relations Board[1] and which was based on charges duly filed and served, alleged that Respondent had engaged in various unfair labor practices proscribed by Section 8 (a) (1), (3), and (5), which may be briefly summarized as follows:

(a) That on and after July 14, 1957, Respondent had refused to bargain with the Union as the certified bargaining representative of its employees in an appropriate unit by engaging, *inter alia*, in some 11 specified types of conduct, including e. g., dilatory and stalling tactics, withdrawal of concessions, unilateral grant to wage and other benefits, sponsorship of and assistance to the circulation of an employee petition to disavow the Union, and final withdrawal of recognition on February 17, 1958;

(b) That on various dates in January and February 1958, Respondent discriminatorily discharged some 274 employees (see Appendix A) and discriminatorily sought to evict 10 employees (see Appendix B), because of their participation in a strike which began on January 17, 1958, and which was caused and prolonged by Respondent's failure and refusal to bargain in good faith; and

(c) That on various dates in December 1957, and January 1958, Respondent had engaged, through certain of its named representatives and supervisors, in various specified acts of interference, restraint, and coercion.

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[1]The General Counsel and his representative at the hearing are referred to herein as the General Counsel and the National Labor Relations Board as the Board.

An amendment to the complaint was issued on May 28 and further amendments were made orally at the hearing. The statement of the case summarizes the pleadings as amended.

Respondent filed an answer and an amended answer in which it denied all allegations of unfair labor practices. Denying also that the strike was caused by its unfair labor practices, Respondent admitted the discharge of the strikers, but pleaded that they had been replaced by other employees. Respondent also filed various prehearing motions which were passed on and denied by Trial Examiner Louis Libbin. Its oral motion to dismiss the refusal to bargain allegations of the complaint, which was made at the conclusion of the hearing and on which ruling was reserved, is now hereby denied for reasons which are fully stated in Section B, *infra*.

Upon the entire record in the case and from my observation of the witnesses, I made the following:

Findings of Fact

I. Respondent's business; the Union as a labor organization

Respondent, a Florida corporation, with its principal office and place of business at Lake Wales, Florida, is engaged in commerce within the meaning of the Act (i.e. annual extrastate sales of citrus fruits, juices, and concentrates in excess of $100,000).

The Union is a labor organization which admits to membership employees of Respondent.

II. The unfair labor practices

A. *Introduction, background, and issues*

From 1947, to February 1957, Respondent's production and maintenance employees had been represented by Citrus Workers Local Union No. 24217, affiliated with AFL, and a succession of collective bargaining contracts had been successfully negotiated between that union and Respondent without a strike. In an election held on January 29, 1957, the present Union received a majority of the votes cast, and on February 6 it was formally certified.

So far as the organization of the present local went, there was little change from that under which the old AFL local had operated, as it had almost the same officers and almost the same members on its negotiating committee. In addition to that, David Wingate, who had been employed by the old union for several years and who had negotiated contracts for it with Respondent (including the final contract dated January 31, 1955, and expiring November 1, 1956), went with the Teamsters' organization on March 1, 1956, as an employee of its Joint Council 89 and as business agent of the present Local 173, and of Locals 60 and 444, which represented employees of a number of citrus producing canning and processing plans in the area.

The principal issue under the pleadings and the evidence is whether Respondent was guilty of a failure or refusal to bargain with the Union, and, if so, the time at which the refusal occurred. This is so because on the determination of that issue will also turn the question whether the strike

was caused and/or prolonged by that unfair labor practice, as the General Counsel contends, and whether the discharge of the strikers was itself an unfair labor practice.[2] The remaining issues are, in comparison, minor ones involving a miscellany of alleged interference, restraint, and coercion, and the alleged discrimination against certain tenant-strikers through efforts at eviction.

There is no issue as to the unit, Respondent admitting that the unit alleged in the complaint is an appropriate one for collective bargaining within the meaning of Section 9 (b) of the Act. (See conclusion of law, number 2 *infra.)* There is also no issue as to the Union's representative status prior to the end of the certification year on February 6, 1958, which also coincides approximately with the date of delivery to Respondent of certain employee petitions disavowing the Union.

B. *The refusal to bargain*

1. The general setting; the negotiators

Contemporaneously with the election at Respondent's plant and the certification of Local 173, the other Teamster locals within the Joint Council 89 had won elections at a number of other citrus plants in the area (Minute Maid at Auburndale, Adams Packing Company at Auburndale,

[2]The General Counsel conceded at the close of the hearing that the record would support a finding of a discriminatory discharge only if the strike were found to be an unfair labor practice strike, in that, assuming a finding of an economic strike, the record established, by stipulation, that the strikers were replaced before their discharges.

Stokely-Bordo at Haines City, Bordo Products Company at Winter Haven, and Lake Wales Citrus Growers at Lake Wales). The subsequent negotiations, though also proceeding more or less contemporaneously, were conducted separately with the individual employers. However, Wingate admitted that it was the Teamsters' aim to negotiate a common industry contract at all the citrus plants insofar as possible; and the Union attempted, through the medium of the Joint Council and a central bargaining committee, to coordinate the bargaining activities of the Union's negotiators.

Though there was no similar coordination among the employers, the evidence showed that the representatives on that side, including Respondent's, nevertheless maintained sufficient liaison to stay informed of significant developments at other plants. The general manager of Adams, for example, was, like Marvin H. Walker, (Respondent's general manager), a member of the Florida Citrus Commission, and Walker testified that they sometimes discussed the negotiations. Furthermore, Bowden's law firm was also counsel for one or more of the other companies. (See footnote 7 *infra.*)

It was apparent from the evidence as a whole that it was the Union's attempts at coordination which accounted to a considerable extent for some of the delays in negotiations and for its failure to press Respondent more vigorously for meetings. Certainly that was so at the outset, for Wingate admitted that the first meeting was not scheduled until April 16, more than 2 months after the certification, because the central bargaining committee was trying to prepare a single proposal which might be acceptable to all the plants. As will be seen, there were later substantial delays at

critical points in the negotiations for which the Union was also responsible.

Respondent was represented throughout the negotiations by its counsel, Bowden, and its production manager, M. A. Stephenson. Walker attended a few meetings, but did not participate actively, and occasionally other management representatives sat in.

The Union's chief negotiator, from April through August, was John Roberts, and thereafter it was David Wingate. Both were employees of the Joint Council and worked under W. W. Teague, who had overall charge of the negotiations in the area and who acted as spokesman at some of the few meetings which he attended. J. W. Morgan, an International representative, acted as spokesman at the final meeting on January 28 which was also attended by Tom Owens, another International representative. A committee from the Local was present at all meetings, but there was no evidence of active participation on their part, and none of them was called to testify concerning the negotiations.

2. The Roberts' negotiations; April through August

Because of a circumstance which was unfortunate to his case, the General Counsel was unable to present any evidence of value supporting his position concerning the April through August negotiations. That circumstance was the fact that Roberts left the Union and went with the management of Minute Maid around the first of September. That alliance with the "opposition" not only placed Roberts in such a position which the General Counsel apparently felt

would jeopardize any reliance on him as a witness, but it developed that Roberts' relations with his former associates were such that they made no attempt after his defection to review with him either the course of his negotiations or the results which he had obtained to date. Neither was the Union able to locate or obtain Roberts' notes, though he claimed to have left them in the Union's office.

Thus, the General Counsel limited himself in this part of his case to presenting testimony by Wingate and Teague as to one or more isolated meetings which each had attended during the period, but that testimony contained nothing of substance which supported the complaint allegations that Respondent was not bargaining in good faith. Though there was some reference to a "hassle" which had occurred concerning a meeting which was first scheduled for July 5 and then changed to July 1, the evidence indicated not only a mutual misunderstanding, but also that the Union may well have been more at fault than the Company in the final failure to meet. And though there was also hearsay testimony of a statement by Roberts purporting to complain about his lack of progress and his difficulty in arranging meetings with Respondent, there was no evidence of substance which would support a finding of dilatory or stalling tactics. Indeed, Walker testified that he attended the August 28 meeting because he had become concerned over the inability of the parties to reach an agreement before the start of the operating season.

Before turning to the subsequent period, the following facts should be noted: The Union presented its first proposal at the first meeting on April 16. It was agreed at the end of that meeting that the Company would prepare and

present its counterproposal. Bowden mailed such a proposal to Roberts on May 15 and it apparently served as the basis of all negotiations during the Roberts regime. The evidence as a whole showed that though considerable progress was made during that period there was still a substantial area of disagreement, and the wage issue and most of the other so-called "cost" items were not touched upon by either party.

In summary, it can accurately be found that the April-August negotiations represented a total loss insofar as the General Counsel's case was concerned.

3. Wingate takes over; September 19

Wingate took over as the Union's chief negotiator at a meeting on September 19. Being without knowledge of the areas of agreement and disagreement as developed by Roberts, Wingate stated his willingness to honor all agreements which had been made in the past and requested that Bowden review the negotiations and brief him as to what had been accomplished to date. That was done by going through the Company's proposal, article by article, with Wingate noting the outcome of prior negotiations as summarized by Bowden. The Union neither then nor later questioned the accuracy of Bowden's summary.

At the conclusion of that review, Wingate suggested that since prior negotiations had proceeded from the Company's proposal, which did not include certain subjects covered by the Union's proposal, the parties negotiate from the Union's proposal for awhile, with particular reference to subjects which had not been covered. Bowden agreed, but

suggested that since Roberts was gone and since Wingate was without the benefit of any notes, the Union might consider using the old contract (which Wingate had helped to negotiate while with AFL) as a basis for further negotiation.

After caucassing, the Union's committee agreed to Bowden's suggestion, and there were discussions of the extent to which the Company was offering or agreeing to be bound by the terms of the old contract. Stephenson testified that Bowden offered to take all or any part of the contract (except wages, which were to be negotiated), observing that it could not be too bad since the parties had lived successfully under it for several years. Though Wingate refused to concede that the Company offered explicitly to accept the old contract, he admitted that it stated its willingness to "go along with the articles in that old contract" which were acceptable to the Union, and admitted further that the extent to which an agreement was reached on that contract depended only on the extent that it was accepted by the Union. Thus Wingate's testimony in its entirety was reconcilable with the view that the Company offered to take all or any part of the contract.

It was finally agreed that the Union would prepare a new proposal in which it would indicate those articles in the old contract which it would accept and those which it wished to delete and in which it would include such modifications and additions as it wished to propose. At this point, despite the fact that a new operating season was in the offing and that the Union was seriously handicapped by the loss of its chief negotiator Wingate stated that the presenting of the new proposal and the scheduling of the next meeting would have to be delayed until after the Teamsters' convention in Mi-

ami, to which he was a delegate, and that it would probably be early October before negotiations could be resumed.

4. The October meetings

Bargaining sessions were held on October 9, 14, 22, and 31,[3] with Wingate acting as the Union's chief negotiator, except that on the 14th and the 22nd, Teague took over to discuss such clauses as hot cargo, maintenance of standards, no-strike-no-lockout, etc., with which Wingate was not familiar.

The negotiations proceeded from the basis of the Union's proposal, which was bottomed, as agreed, on the old AFL contract, which tracked its provisions, and which indicated acceptance of particular provisions and articles by the notation "O. K." and deletions by the word "Out." Wingate informed the Company that the proposal as tendered had been drawn up in his absence at the convention and that errors were to be expected. He testified that either on the 14th or the 22nd, he presented to the Company revised pages (the first five, plus the ninth) which he had redrafted to reflect both corrections and agreements reached. Respondent denied ever receiving the revisions in the form allegedly tendered, denied that the draft of the alleged original proposal which Wingate identified was the one delivered to it on the 9th, and produced instead a copy of a different draft which Stephenson identified and which he testified the Company had mimeographed on the 9th because of the scarcity of copies which the Union produced on that date.

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[3] Though Wingate fixed the first October meeting on the 10th, the evidence as a whole established that the 9th was the correct date.

The evidence as a whole supports Respondent's contentions. Thus Wingate admitted that the copy which he identified and used at the hearing was not his working copy which contained his notes, but that his own copy was lost some time after he turned it over to a secretary in the Union's office. In addition, the draft which Respondent had duplicated included at least *some of the revised pages* which Wingate allegedly submitted at a later meeting. Finally, Stephenson's notations on his own working copy of the draft which the Company duplicated showed that he had made entries under date of October 9 at various places on some of the pages which were plainly duplications of those which Wingate identified as the revised pages which he submitted at a later meeting.

Though confusing at the hearing, the evidence concerning the mixing up of the proposals was not shown to have prejudiced the actual conduct of the negotiations; it reflected only ineptness or carelessness on Wingate's part. Indeed, the evidence showed that progress was made on many points during the October meetings, though not at the pace the Union desired. And though a substantial area of disagreement remained at the end, Respondent's failure to yield was entirely on issues which fell within the area of compulsory collective bargaining prescribed by Section 8 (d) of the Act, i. e., "wages, hours, and other terms and conditions of employment," on which, though the obligation to bargain is mandatory and may not be evaded, the bargainer is not compelled to accede to or compromise demands. For it is now definitely established that, "it is lawful to insist upon matters within the scope of mandatory bargaining," *N. L. R. B.* v. *Wooster Division of Borg-Warner*, 356 U. S. 342, 349 (adv. sh.), decided May 5, 1958, and that ques-

tions of reasonableness or unreasonableness of a position are accordingly not determinative.[4]

For these reasons it is unnecessary to spell out either the discussions concerning, or the contents of, the provision in the proposals which were still at issue; it will suffice to observe that as matters stood at the conclusion of the October meetings, the important issues which were preventing agreement concerned the management prerogative clause, and the no-strike clause, which the Company desired and which the Union opposed, and the maintenance of standards, the hot-cargo, and the separability and savings clauses, which the Union desired and which the Company opposed.

Nor did Respondent's conduct during this period establish that it was engaging in dilatory or stalling tactics. It had participated in four meetings in the space of approximately 3 weeks, following a delay of roughly comparable length which was chargeable solely to the Union. Although there were complaints by the Union about the gaps between the meetings and references to its concern about concluding an agreement because of the imminence of the operating season, its expressions of concern are to be measured against the delay which it permitted to occur after September 19 and again after the October 31 meeting.

The testimony is somewhat in conflict as to the content

[4]Though good faith bargaining is inconsistent with a *predetermined* resolve not to budge from an initial position, "it is not necessary incompatible with stubbornness or even with what to an outsider may seem unreasonableness." *N.L.R.B. v. Truitt Manufacturing Co.*, 351 U.S. 149, 154-155 (concurring and dissenting opinion).

of Wingate's statement at the end of the latter meeting. Wingate testified that as the meeting reached adjournment, he stated that it was necessary to expedite the negotiations because the employees were anxious for a contract and that he proposed to take into account all arguments, *pro* and *con*, on the issues in disagreement, according to his impression of the negotiations, and would put together a workable agreement which he felt that both parties could live with, and that *as soon as he did so, he would call the Company to meet on it*. According to Stephenson, Wingate stated that he was not prepared to schedule another meeting because *he was awaiting some word from the International*. Stephenson's testimony was corroborated by Lindner E. McVay, Jr., and R. D. Chelette, who had attended the October 1 meeting.

Though Wingate denied on cross-examination that he made any reference to word from the International, he admitted that the breakoff was at his request. The conflict, therefore, concerns no crucial matter; the important point is that it was the Union which again assumed the burden of going forward at a critical time in the negotiations and which again was guilty of permitting a lengthy delay.

5. Private interlude; December 4

It was around November 22 when Wingate mailed to Stephenson, without a covering letter, a copy of the Union's

final proposal;[3] and on December 4, they held a private meeting concerning it. The testimony is in conflict as to which of them requested the "man-to-man" meeting and which suggested that the discussions be held "off the record." There is no conflict, however, that such was the understanding and that the brief conference of an hour or an hour and a quarter proceeded on a purely exploratory basis, with a view of marking out the general areas of agreement and disagreement and of ascertaining how far apart the parties were in their respective positions. Wingate and Stephenson made it clear to each other that they were not speaking for their committees and that their respective views were their own personal ones and without binding effect on their committees, which, it was understood, would be called to meet in a bargaining session.

Stephenson had made marginal notes on his copy of the proposal, which, he testified, constituted only memoranda to himself, and in some instances, only his attempts to correct grammatical errors. In going through the proposal he discussed those notations with Wingate, who copied them exactly or in substance onto his own working copy. According to Wingate, those were the only respects in which Stephenson indicated dissatisfaction with the proposal, with

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[3]Wingate's testimony indicated originally that he had mailed the proposal as early as November 15 and that he telephoned Stephenson concerning it between the 15th and the 20th. A stipulation settled the point that Stephenson received the proposal on the 23rd and Wingate conceded on cross-examination he may have been in error in testifying that he had called Stephenson on November 15 about a meeting.

In the meantime, the Local had held a membership meeting on November 14 at which Wingate had submitted for approval a draft of his proposal. The membership voted also authority to the negotiating committee to call a strike whenever, in its discretion, one was deemed necessary.

the result that at the end of the conference Wingate expressed the view that he felt, "we just about had us a contract." According to Stephenson, the proposal was not covered completely, but they simply "leafed" or "shuffled" through the proposal, giving attention mainly to the provisions to which Stephenson had noted his personal objections or corrections.

The conference was also noteworthy for the fact that for the first time the wage issue was adverted to by representatives of the parties. Thus, Wingate's proposal had provided for a 25 cents an hour wage increase, and Stephenson queried Wingate as to whether that was intended seriously. Wingate suggested as his personal opinion that the employees might accept 15 cents. Stephenson referred to the fact that some of the other employers in the industry were offering either 7 1/2 or 8 1/2 cents, and also to the fact that Teamsters' representatives who were negotiating with another company had reportedly lowered their sights to 12 1/2 cents the previous night. Wingate disclaimed knowledge of the latter development, but expressed the opinion that if that were the case, then 12 1/2 cents would be "rock bottom."

The true posture of this private meeting lies somewhere between the respective claims, the meeting being much less casual than claimed by Stephenson, but less complete and definitive than claimed by Wingate. Aside from the fact that it is conceded the conference was not a *negotiating* meeting, there are significant circumstances which prevent acceptance of Wingate's view that about all that was left was to call the committees together to ratify, in effect, the results which he and Stephenson had reached:

The meeting was too brief to have permitted covering, except on a comparatively casual basis, all the provisions of the Union's new proposal. Wingate made no attempt to redraft, either for submission to his own committee or to both committees for negotiation, a proposal which would meet or incorporate Stephenson's objections. The understanding that the meeting was private and "off the record" was studiously complied with during the subsequent negotiation meetings, with neither Wingate nor Stephenson even hinting at the fact of such a meeting or at any of the understandings allegedly reached in the private conference. Wingate did not call his committee together to go over Stephenson's objections, nor did he testify that he ever apprised the committee of them. Stephenson testified that he did inform both Walker and Bowden of his meeting with Wingate, but that he made no further reference to it.

The following considerations are of significance, on the other hand, in evaluating both Stephenson's testimony and Respondent's position in the subsequent negotiations:

Stephenson had had the proposal for some 10 days, and had not only reviewed it, but had obviously given considerable thought and attention to all or most of the changes and new provisions which Wingate had included. The discussions proceeded on a frank and open basis, with Stephenson showing no hesitancy in stating his personal position and in permitting Wingate to copy the notations which represented his objections to certain provisions and his suggestions as to others. Both the notes and the discussions indicated that agreement was not only possible but was near; certainly there was neither suggestion or indication that negotiations could not proceed and be successfully concluded on the

basis of the new proposal. Thus, Stephenson's private reactions were wholly at variance with the expressions of purported shock as later voiced by Bowden (on December 18 and January 28) and his representations that the new proposal had so prejudiced the negotiations as to prevent its use, even as a basis for discussions.[6]

Wingate testified that at the conclusion of the meeting, he suggested that he would get together with his committee and that Stephenson should do the same and that he was sure that they could iron out the objections which Stephenson had raised. Stephenson admitted that there was talk of setting up a negotiation meeting and that he agreed to contact Bowden and arrive at a date and notify Wingate. On this occasion, therefore, it was the Company which assumed the burden of going forward.

Wingate testified further that after some 3, 4, or 5 days he called Stephenson and was informed that the Company was not ready for a meeting, and that in another 2 or 3 days he called again with similar results. On December 11 Wingate sent Stephenson the following wire:

> RE MEETING BETWEEN COMPANY AND UNION NEGOTIATING COMMITTEE PREVIOUSLY REQUESTED. THE UNION NEGOTIATING COMMITTEE IS SERIOUSLY CONCERNED

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[6]Briefs on both sides contain reliable analyses of the extent to which the new proposal included new matter. What the evidence as a whole showed was that Wingate attempted in good faith to draw up the sort of a proposal which he had adverted to at the close of the October 31 meeting, and that the end product could have served as easily, or more easily, as the basis for ensuing negotiations as any proposal then on the table. The private talks alone demonstrated the latter.

THAT THE COMPANY HAS NOT ANSWERED ITS REQUEST MADE LAST WEEK FOR A MEETING TO HEAR THE COMPANYS POSITION ON FINAL CONTRACT AND WAGE PROPOSAL SUBMITTED BY THE UNION APPROXIMATELY TWO WEEKS AGO. THE UNION IS NOW RENEWING ITS REQUEST AND PROPOSES THAT A MEETING BETWEEN THE COMPANY AND THE UNION COMMITTEE TAKE PLACE TOMORROW DECEMBER TWELVE AT 9 AM IN THE WALESBILT HOTEL. PLEASE CONFIRM.

Stephenson replied on the same date with the following wire:

BECAUSE OF PRIOR COMMITMENTS THE COMPANY REPRESENTATIVES WILL BE UNABLE TO MEET DECEMBER TWELFTH AS PROPOSED IN YOUR WIRE. THE COMPANY PROPOSES A MEETING WITH THE NEGOTIATING COMMITTEE DECEMBER EIGHTEENTH AT TEN AM IN THE WALESBILT HOTEL. PLEASE CONFIRM IF SATISFACTORY TO YOU.

Wingate confirmed by wire on December 13.

Stephenson testified that the December 12 date proposed by the Union conflicted with its Board of Directors' meeting.

6. The freeze; the December 18 meeting

On the night of December 12-13, a disastrous freeze occurred throughout the Florida citrus belt, exceeding in severity any which had occurred since December 1934. Though the freeze would have a tremendous effect on the current year's crop, as well as on future crops (through damage to the trees themselves), there was no way by which the extent of the loss and the effect on the industry could be gauged at the time. This was because, so far as the current crop was concerned, the extent to which the crop could be salvaged would depend largely upon the weather which would follow the freeze. Thus, a period of higher temperatures, i. e., 82 degrees and above, would cause a fermentation of the juice within the frozen fruit, thereby destroying its usefulness. So far as future crops were concerned, the extent of damage to the trees was a matter which could not be determined for several months.

In any event, the freeze was obviously a factor which would tremendously affect Respondent's operations and which would necessarily influence any negotiations for a contract, since not only were wages and other cost items directly involved, but also questions of hours and opportunities for employment generally. Though a shorter season was one result which could definitely be forecast, there would be peak periods and excessive work schedules during the emergency harvesting and processing periods.

In the meantime, though Teague had publicized a strike threat on December 11 Respondent also learned prior to the December 18 meeting that other citrus plants had demanded

— and, according to its information, had been granted — a suspension of negotiations by other Teamsters' locals to enable them to appraise their current situations. Walker testified that Teague's published strike threat influenced him to attend the meeting, and that he intended to request the same consideration which had been given other companies.

The parties were again represented by the same chief negotiators, and there were also present Teague, for the Union, and Walker, for the Company. In the meantime, Bowden had been delayed by bad weather in flying down from Jacksonville, and Stephenson had notified the Union that the meeting could not begin before 1:30 p. m. When the Company's representative arrived at that time, they were informed that the Union's negotiators were holding a private conference; and it was finally around 2 p. m., that the meeting got under way.

The meeting opened with Wingate's inquiry as to Respondent's position on the Union's last proposal, but Bowden stated that they were not going into that because Walker wanted to make a statement concerning the freeze. Wingate persisted, however, asking that the Company state its position on the Union's proposal before discussing the freeze. Bowden again stated that there was no point in going into the proposal because his examination of it showed that it was far different from anything which had been discussed or agreed upon in the past, and, on Wingate's inquiry, mentioned certain clauses which Wingate had changed or redrafted despite agreements which had been reached in the past; but, he added, the Company was not going into that, because Walker wanted to speak. On Wingate's in-

quiry, Stephenson agreed that Bowden's statement also reflected his position.[7]

Wingate insisted on speaking before Walker, and made a lengthy statement in which he reviewed the negotiations, accused the Company of engaging in stalling tactics, and (anticipating Respondent's intention of using the freeze to request further delay) made his own appraisal of the freeze, minimizing its effect as a factor which would affect the negotiations. He concluded by referring to the results of the strike vote and by giving the Company a deadline of 4 p. m., either to reach a contract or to give reasonable assurances that one could be reached, under implied threat of a strike.[8]

Walker, now having his opportunity to speak, did not make the request to suspend the negotiations which he had come into the meeting for the purpose of making. He mentioned, instead, the strike vote to which Wingate had referred and to the implication that Wingate was threatening a strike unless a contract were reached that day, and stated that he refused to respond to the pressure of threats, and therefore had nothing to say. There was some dispute in the

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[7]Bowden did not state that the Company was withdrawing all previous offers, and the only evidence to the contrary consisted of inferences which Teague and Wingate drew from Bowden's above statements and his further statement at another point that the Company had nothing "new" to offer, or nothing to offer "at this time."

Indeed, Teague testified further that the Union was expecting Respondent to withdraw all agreements and proposals during the meeting because the other locals had just received notice of such withdrawals by telegram from Bowden's law firm on behalf of two other companies. This fact may have influenced his inference that Bowden was doing the same at the meeting.

[8]Wingate admitted that on Bowden's inquiry he stated that a strike was a "possibility," and testified that Bowden replied that that did not "scare" the Company and that he thought it would be a good thing "to let the people strike and get it out of their system."

testimony as to whether it was Walker or Wingate who then observed that the meeting was over or adjourned, but the preponderance of the evidence plainly showed that the meeting broke up immediately after Stephenson's statement that he had nothing to say.

Though the full significance of the December 18 meeting can be determined only in the light of later developments (to be summarized, *infra*), this much appears from the meeting itself and the events which immediately preceded it:

1. This time it was the Company which delayed setting up a negotiation meeting, at a crucial time, when it appeared from the private meeting (without benefit of counsel) that agreement was near.

2. The unfortunate circumstances of the freeze brought home to the Union realization that its earlier dalliance in the negotiations had placed its bargaining position in peril. Thus the urgent deadline, the threatened strike, and the attempt to forestall use of the freeze as an excuse for further delay.

3. There were no negotiations as such, and it was plain from the entire evidence that Respondent came into the meeting with no intention of negotiating on contract proposals, but only on its contemplated request for a suspension of negotiations.

4. Though Walker's purpose in attending was to forestall or delay the threatened strike (as publicized by Teague) by pleading for a temporary suspension of negotiations, he assigned Wingate's implied strike threat as

justification for his failure to say anything. If sincerity be assumed in Walker's testimony, then Wingate's verification of the strike danger would only have augmented the necessity for Walker's plea.

5. There remained ample time (despite the threatened deadline) for Walker to have presented fully his views as to how the freeze would affect the Company's ability to continue in negotiation at the time and to plead for consideration from the Union; nor could Walker assume in advance that he would fail in his attempt. Indeed, despite Bowden's apparent invitation of a strike, none was called for a full 30 days after the meeting.

6. Even if failure were to be assumed, the emergency conditions then existing may well have justified Respondent in breaking off unilaterally, subject to resuming negotiations when its situation had clarified. Thus, in no case could Walker's plea have been *futile;* it was *required,* both from the standpoint of protecting Respondent's legal position and of performing its legal obligation to bargain.

7. Though this breakoff was plainly chargeable to Respondent, it at no time thereafter notified the Union that it was ready to resume negotiations on the contract proposals.

We turn now to the subsequent happenings, which shed further light on Respondent's attitude and sincerity in the December meeting.

7. Christmas comes; Holly interlude

J. E. Holly had been employed by Respondent some 13 years, had served as a chief shop steward for the old AFL union since 1948, and had also acted as its representative in certain arbitration matters. Though a member of Teamsters, he had held no office in it.

Holly testified that on Christmas Day while he was acting as watchman and when the plant was not in operation, he had a long conversation with Stephenson, which, because of its importance to the issues, is quoted at length below:

> A. Mr. Stephenson came down to his office that morning and went in, and I suppose worked a while. He came out, and we struck up a general conversation as to how bad the freeze had been, and how much warmer the day was than it had been two weeks before. After that, well, Mr. Stephenson asked me what I felt was coming of the Union, and I replied that I was pretty much disgusted, I didn't know for sure what was going to happen, that there were rumors of a strike. And he told me that a strike would be foolish, that the season would be short because of the freeze, and that it didn't matter if we struck, the plant would shut down pretty soon; if it didn't shut down the strike would possibly put — a lot of good men would lose their jobs, and he told me that we should get together and kick the Teamsters organization out and we would all get along better, that there were certain benefits

that were to be placed on the bulletin board, advertised in the next few weeks which might give us an incentive to do so. He asked me why I didn't get together with a group of my friends and come to his office and tell him that we were dis-satisfied with negotiations as they were, and thought that we should have had a raise before, and that we thought that the Union was causing us not to get our raise, and from that we could start decertification procedure. He stated that we would need legal counsel in such a matter, but that that could be arranged off-hand, off the record. He also told me that if we needed, thought we needed a Union, we could set up an independent union, and that they would assist us in doing so; that it was not necessary for us to be in a large International organization.

In the conversation Mr. Stephenson told me that if we didn't have the Union, that possibly, we would perhaps next season get our hospitalization free and perhaps a better policy; that they didn't intend to give us anything that the Teamsters might claim credit for as long as we kept them in there. He also told me the rates of pay which would be posted, and said that they would be posted around the middle of January and they would be retro-active to, I believe, the 16th of December.

That was the crux of my conversation with Mr. Stephenson. It was drawn out over a good long, much longer period of time than what it took me

to tell it, with a lot of things about cold damage and the conditions in the plant, and things like that thrown in.

Q. Mr. Holly, do you recall whether he made any references to the contract negotiations with the Teamsters?

A. Mr. Stephenson said that they would have to meet perhaps another time or two with the Teamsters, but after February 6, which was our date when we could be de-certified, that that would be it; that they didn't intend to sign a contract with a bunch of gangsters and crooks, that we knew all the publicity they had been getting and the investigation that had been going on in Washington.

• • • •

Q. Have you related all that you can recall that was said in that conversation in relation to Union matters now?

A. I think we discussed — I mean in the discussion about wages there was one particular category that we talked about, that there had been some controversy over for some time, and Mr. Stephenson said at that time that he had begun to see that in our way, or I believe he said my way, and that he thought there should be a bigger differential in pay, and that it would come out that way on his statement of wages, straight statement of increase which was to be posted on the company board, on the bulletin board.

Q. Do you recall what that job classification was?
A. That was the classification of set-off stack man on the ends of lines 1 and 2, which were 46 ounce lines, a job that was very much more menial than any of the other jobs in the warehouse.
Q. Do you know later whether or not the wage proposal, which was later posted, did give the raise he stated to you that day?
A. Yes ma'am. Everything occurred just as he stated, except to the best of my knowledge he posted the proposal perhaps a week earlier than he had given me to understand that he would.

A lengthy cross-examination failed to shake Holly's testimony. He admitted that he had spoken to Stephenson on several different occasions concerning a higher rate for his own job. He denied that he himself brought up the subject of the company union, and denied inquiring what Stephenson thought of the prospects of getting one into the plant.

Stephenson admitted having the conversation with Holly on Christmas Day, but denied most of the matters of significance which Holly had testified to, such as Stephenson's alleged suggestion as to kicking out the Teamsters — "a bunch of gangsters and crooks" — the formation of a company union, etc. He also denied referring to an increase in the Blue Cross plan and denied having stated that he would not sign a contract with Teamsters. Stephenson admitted having discussed the freeze and having expressed the hope that there would be no strike. According to Stephenson it was Holly who injected the subject of a company

union. He testified that after Holly expressed dissatisfaction with the negotiations and with the Union's representatives he suggested the possibility of an employer-employee operating committee, but Stephenson did not testify what response he made to Holly's suggestion.

Stephenson testified further that on earlier occasions Holly had discussed with him the possibility of an increased wage rate in a particular operation and that during the Christmas Day conversation Holly asked if any increase was going to be given; that he told Holly the Company's consideration of a wage proposal had been disrupted by the freeze, but that it was again turning to the question and expected to shape up and submit a wage proposal to the Union in the near future. Stephenson also adverted to the earlier discussion of a wage differential for a particular job, and informed Holly that after consideration it appeared to him that a differential was justified.

In resolving the credibility issues presented by the foregoing testimony, the following points are significant:

Stephenson admitted the holding of the conversation and that it covered the subjects of a company union and the Company's contemplated wage offer. Though testifying that it was Holly who injected the company union question into the conversation, Stephenson refrained from testifying what his own response to the suggestion was.

Holly's long time employment, his long time connection with the former union, his absence of a position with Teamsters, and his criticism of that union, its representa-

tives, and the negotiations obviously marked him as promising material to lead a defection movement.

Stephenson's promises and predictions, as Holly testified to them, later came through exactly as prophesied, save that the wage offer was posted a week earlier than Stephenson had indicated. Later developments, summarized *infra*, showed that Respondent assisted the movement to "kick the Teamsters out," which Holly's testimony showed that Stephenson was intent on sponsoring and assisting.

Finally, Holly was an impressive witness both on direct and on cross-examination, while Stephenson, in comparison, sometimes reflected on cross-examination a demeanor and manner of reluctance in testifying which prevented acceptance of his testimony at face value. Holly's testimony is therefore credited.

8. Respondent's wage offer; its rejection; the strike

On January 4, Respondent submitted to the Union and simultaneously posted on its bulletin board its detailed wage offer and a transmittal letter which read as follows:

> Since the citrus crop generally was subjected to seriously low and damaging freezing temperatures on December 12 and 13, 1957, this Company has been unable to arrive at any definite estimate of the damage to fruit and the losses incurred. Neither can we determine or forecast with any accuracy the effect on our future operations of this disasterous blow nature has dealt. It is with regret that we

must believe and so advise our people that, at the best, our operations will be seriously curtailed. However, it is our intention to provide every bit of work in all departments that conditions will allow for.

Product prices are and will be higher, but fruit returns will be generally much lower than such selling prices may seem to indicate, because of reduced volume and the much lower yields and much higher operating costs we are faced with.

Taking all this into consideration and with the desire that our employees be hurt as little as possible under these conditions, we have developed an increased wage schedule, a copy of which is enclosed. The increases included compare favorably with some eight or ten other rate schedule increases we understand have been granted in this 57 58 season to other citrus workers. In most instances these increases have been on minimum rates below our current $1.105 level.

It is our desire to make these increases retroactive to December 16, 1957. The first actual payment of wages on these increased rates will be paid for the week ending January 26, 1958. Unless we are advised by you in writing prior to January 11, 1958, that you do not agree to the increase herein set out, we shall assume this action is agreeable. In the event we put these raises into effect as stated above, the retroactive pay then due our employees

will be figured and distributed as soon as practical after January 26, 1958.

Walker testified that the wage increases averaged 5 1/2 cents an hour, within a range of from 4 1/2 cents to 10 cents an hour.

Wingate testified that upon receipt of the wage offer he called Stephenson and inquired why no contract proposal was submitted with the wage offer, and that Stephenson replied that no contract was intended to go with the wage offer and that the Company had no contract to offer. Wingate expressed the opinion that the employees would not accept the wage offer on that basis. Stephenson asked if he intended to submit it, and Wingate stated that he did.

Stephenson denied telling Wingate that the wage offer was being made on the basis of no contract, but he admitted that he stated that the failure to submit a contract was intentional, and explained that the contract was another phase of the negotiations and that the Company had full contract proposals with the Union, with all of which Wingate was familiar. Stephenson did not, however, offer to resume negotiations or state that Respondent was ready to do so.

The circumstances which are of chief significance in evaluating the foregoing testimony are Stephenson's admissions, in the light of the Company's breakoff at the December meeting, that the failure to submit a contract was intentional and his failure to indicate willingness to resume negotiations. His vague reference to Respondent's "full proposals" was, of course, meaningless. He obviously could not

have meant Respondent's original proposal, which had been subjected to many amendments, modifications, and deletions during the course of the Roberts' negotiations and which had finally been laid aside at the end of the September 19 meeting, at Bowden's own suggestion. Obviously, also, he could not have meant the old AFL contract, which had been widely departed from by modifications and deletions during the October negotiations. And, of course, if he intended to reoffer either the Company's original proposal or the old AFL contract, he would necessarily have stated which of the two he meant, and would also have been obligated to specify whether he was offering the one he designated in its form as originally tendered or in some other form as amended and modified by subsequent agreement.

Certainly, Stephenson was not referring to Wingate's proposals as submitted during the October negotiations. for the parties had been unable to reach agreement on those. Finally, he could not have meant Wingate's final proposal (despite the aura of agreement which he and Wingate had managed to generate during their private meeting), because Respondent had flatly refused to negotiate on that on December 18.

There was thus no proposal in existence at the time which Stephenson could have pointed to as embodying what Respondent was willing to sign and enter into. Nor did Stephenson suggest then or later that Respondent intended to prepare and submit such a proposal of its own or that Respondent was ready to resume negotiations on some one of the Wingate proposals.

Though the foregoing considerations alone strongly suggest that Stephenson in fact made no reference to Respondent's contract proposals, there is further evidence which resolves the point, confirming Wingate's testimony that Stephenson stated that the Company had no contract proposal to accompany its wage offer. Thus, the Christmas day conversations between Holly and Stephenson showed plainly that Respondent intended and planned its wage offer so as to induce employees who were dissatisfied with the negotiations to start a decertification movement. The withholding of a contract proposal obviously fitted into that plan to foment employee dissatisfaction, for Teamsters would thereby be prevented from claiming credit for having accomplished anything in the negotiations, which Stephenson acknowledged was one of Respondent's aims. Indeed, it was largely because of Respondent's failure to accompany its wage offer with a contract proposal that the Union members voted rejection of the wage offer in the meeting next to be referred to.

It is, therefore, concluded and found on the entire evidence that Stephenson informed Wingate that Respondent had no contract proposal to submit with its wage offer.

The Union called a meeting of its membership on January 9 at which Wingate reported that the Company was offering no contract to accompany the wage offer. After discussion on the floor the membership voted unanimously to reject the wage offer without a contract.

On January 10, Wingate wrote Stephenson as follows:

With reference to our Contract and Wage nego-

tiations, please be advised that the membership of Local 173 took official action on January 9, 1958 on the Wage Proposal submitted by you on January 4th. Your proposal was unanimously rejected.

In a sincere effort to bring these negotiations to a peaceful conclusion the membership voted to make this last and final offer to the Company as follows: The final proposal on a contract which you already have in your possession, with the exception of the wage demands thereto, and the following wage schedule.

[Schedule omitted.]

Mr. Stephenson, this is the last and final proposal to Florida Citrus Canners Coop in an effort to bring the contract to a conclusion. This proposal is made with the understanding that the effective date will be retroactive to December 4, 1957. Unless this is acceptable to Florida Citrus Canners Coop we have no alternative but to take action as we deem necessary to bring the issues to a conclusion.

I will appreciate a prompt answer from you as to whether or not this is acceptable.

Ignoring Wingate's request for an answer, Respondent posted to its employees, on or about January 16, the following letter, signed by Stephenson:

To Our Employees —

The Teamsters Union has refused to agree to the Company putting into effect the wage increases proposed and posted which were intended to have been effective in the week ending January 26, 1958 together with back pay at the new rates being figured back to December 16, 1957 and distributed to each employee. This back pay alone estimated at over $10,000.00.

We quote from a letter dated January 10, 1958 and signed by David F. Wingate, Business Representative, Local 173 . . .

> "With reference to our Contract and Wage negotiations, please be advised that the membership of Local 173 took official action on January 9, 1958 on the Wage Proposal submitted by you on January 4th. Your proposal was unanimously rejected."

The Company regrets that under these present circumstances the increases will not be made effective on the dates we proposed. We hope that every employee took advantage of the right given them under the law to voice their opinion and vote on this matter which seemed to me vitally important to each one. We hope, too, that every employee understands that Union membership is not a requirement to work or to vote on such a question. Membership in a Union may only be required to

vote on and engage in the internal affairs of a Union, as when electing officers, etc.

The Company is concerned about reports and rumors of threats and intimidation being practiced by some of our employees on their fellow workers. This is illegal by law and contrary to Company rules. We invite anyone so threatened to inform us of the event and we will follow valid reports with disciplinary action.

We are making every effort to obtain suitable fruit for all operations and pack as much as possible before the fruit becomes unusable or the remaining short supply runs out. Recently released official estimates by the U. S. Department of Agriculture of the fruit loss from freezing show that there are at least 22 million (22,000,000) boxes of oranges and 4 million (4,000,000) boxes of grapefruit less for industry to use. We agree with many others in the industry that the final loss figures will be much higher, especially so far as product processing is concerned.

If we can be of any assistance in providing information or answering questions concerning the general situation, please feel free to contact me directly or through your foreman.

Having received no reply to Wingate's letter after approximately a week, the Union's negotiating committee called a strike for Friday, January 17 pursuant to the authorization which had been voted it at the November meet-

ing. Approximately 278 employees of the 783 within the unit actually joined the strike.

On January 18, Wingate wired Stephenson expressing the Union's readiness to meet "at any time day or night" to settle the dispute. Stephenson replied on January 20 expressing in turn the Company's readiness to meet "at any mutually convenient time," but suggested no time or place. On the same date, Wingate wired Stephenson repeating the Union's willingness to meet at any time the Company was prepared to meet. On January 21, Stephenson wired suggesting January 29. On January 22, Wingate wired confirming the 29th if that was the "earliest meeting date that Company deems suitable." On January 23, Stephenson replied, stating that Respondent's commitments had ruled out the 29th, but suggesting instead the 28th, if acceptable. Wingate confirmed by wire on the 23rd.

Though there was evidence that petitions disavowing the Union were being circulated among the employees at the plant for some time prior to the 28th (see Section 10, *infra*), the happenings at the meeting will be first summarized.

9. January 28; the final meeting

The meeting on January 28 was the final negotiation meeting held between the parties. J. W. Morgan and Tom Owens, International representatives, were present, along with Wingate, with Morgan acting as chief spokesman for the Union. Walker attended for the Company, but took no part in the negotiations. Wingate and Morgan testified at length concerning the happenings at the meeting, but Walk-

er and Stephenson testified only briefly and in general terms as to what transpired. Though the latter testified that the meeting was devoted mainly to Bowden's reviewing with Morgan the contents of prior proposals and briefing him on which provisions had been agreed to and which had not, Stephenson's notes on his working copy of Respondent's original proposal corroborated testimony by Wingate and Morgan that negotiations were actually engaged in and that progress was made in reaching agreement on some provisions on which the parties had formerly disagreed. The Wingate-Morgan testimony is, therefore, credited, with chief reliance on Wingate's, since Morgan evidenced a tendency toward overstatement.

The meeting opened with Morgan's inquiry of Bowden as to what was wrong with the Union's last proposal, and Bowden replied that Morgan should look at his notes to determine what was wrong with it. Morgan then asked what the Company had to offer "at this time," and Bowden replied that it had nothing to offer. Bowden also referred to the Union's final proposal as being so changed from anything that had ever been negotiated before that he did not want to go into it. He acquiesced, however, in Morgan's suggestion that they work from the Company's original proposal, "starting from scratch."

Morgan and Bowden then went through the proposal, article by article, reaching agreement on some provisions, failing to agree on others, and laying aside others — including again the money items — by mutual consent. After reaching Article XIV, dealing with leaves of absence, the discussions turned back to Article VIII, on seniority, and a heated argument arose when Morgan claimed that in cer-

tain respects the Company's proposals were in conflict and that the Company was saying one thing while meaning another. Morgan testified that he questioned the Company's sincerity, and that the discussions ended in "a point of lull," with him and Bowden "spatting off at each other." Morgan admitted that he charged that Bowden's position on certain phases of the arbitration proposal was motivated by Bowden's desire to make a fee, and that Bowden recriminated by referring to the fact that Morgan had taken the Fifth Amendment some 57 times before the McClellan Committee.

There were no further negotiations. The Company broke off, stating that there were operational problems at the plant which required attention. Morgan asked for a meeting that night for the purpose of continuing the negotiations, citing the progress which was being made, but Bowden stated that Stephenson's services were required at the plant and that he could not continue without Stephenson. Morgan then requested a meeting the next day, but Bowden stated that he had other plans. Morgan asked if it was possible to set up a meeting at any future date, but Bowden stated that it was not possible at that time and that the Union would have to wait until the Company contacted it for a future date.

No further word was received.

10. The petition

The following petition was circulated throughout Respondent's plant from January 22 to February 7:

FLA CITRUS CANNERS COOP.
LAKE WALES FLA AND TO ALL IT MAY CONCERN WE THE UNDERSIGNED EMPLOYEES OF FLA. CITRUS CANNERS COOP. DO NOT WANT THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS TO REPRESENT US IN ENY WAY. AND WE WISH TO EXCEPT PAY OFFER OF JAN 4 1958

That legend represented the draft on the original copies as prepared by Raymond E. Sherrer and Clyde Lanier. Additional copies were prepared and circulated on which the transcription varied slightly but not in substance.

Since an issue is presented as to whether the circulation of the petition was pursuant to Respondent's usual and normal rules, attention will first be turned to the question of what those rules were.

The earlier contracts with the AFL union contained the following provisions relating to union activities on the premises: (a) The union agreed that there would be no solicitation of membership or collection of dues from its members which would in any manner interfere with the production or proper operation of the plant. (b) The union could collect weekly dues through union stewards on a specified day. The weekly collection activities were to be limited to one-half day in each department and the stewards were to be on their own time, though in the Company's discretion they might be paid for short periods. Collections were to be made in an orderly and expeditious manner, so as not to interfere more than necessary with the operation of the plant.

Both the Company and the Union proposals during the current negotiations contained provisions somewhat similar to the foregoing. The Company's proposal contained, for example, a provision (on which agreement was reached during the Roberts negotiations) that there would be no solicitation of membership or collection of dues on Company time, "or which will in any manner interfere with the production or proper operation of the plant."

Neither the old nor any contemplated provision covered precisely the sort of union or antiunion activity as the circulation of the petition represented, but considerable testimony was offered that Respondent had a rule or practice under which employees were permitted (on their own time) to solicit collections for flowers, illnesses, disasters, church dinners, etc., provided permission was obtained and provided the solicitation did not interfere with the work of either the solicitors or of the employees solicited. Thus, under that practice, also, there was no precedent for the sort of activity as the petition represented here. The closest analogy was disclosed by Stephenson's testimony that *it had not been the practice to permit the union to solicit other employees for union membership during working time.*[9]

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[9]Though Respondent offered the testimony by R. D. Chelette (superintendent of concentrate) as to an occasion on which he had allegedly given permission to a Mrs. Newvell Connelly (or Godwin) and Theodore Hall to canvass the employees concerning their preference on a shift equalization, the General Counsel called Hall in rebuttal, who testified that it was Chelette who had requested Mrs. Connelly and him to canvass the employees to ascertain their desires. Furthermore, though Chelette answered a leading question as to the giving of permission *to the union*, his testimony concerning the circumstances showed that the matter arose in June 1957, after the AFL contract had expired, and that Mrs. Connelly raised the question. Hall's testimony is credited.

We turn then to the evidence surrounding the petition and its circulation, concerning which numerous witnesses testified and which established that the petitions were circulated and signed by employees during their working time with the full knowledge and approval of management.

According to Stephenson, he was approached on the afternoon of January 16 by Raymond Sherrer, who told him that the employees were considering passing around a petition and asked whether the Company rules would prohibit it. Stephenson informed him that he knew of no rule which would prohibit it, if it were handled in the same manner as contributions, collections, etc., i. e., so as not to interfere with the regular work and duties of the employees.

Sherrer testified that he related his request to the fact that the Union had rejected the Company's wage offer and the Company's notice to the employees had suggested that they contact Stephenson or their foreman if they had any questions. He testified further that Stephenson stated he *did not know of any rule either way*, for or against the circulation, and that he did not ask Stephenson for permission to circulate the petition during working time.

Sherrer testified that he drafted the petition because of his dissatisfaction with the union's rejection of the Company's wage offer, and that he had no help or assistance from the Company; that he himself circulated copies of the petition in some of the departments, and then turned them over to a woman whom he had never seen before or since, and she replaced them later in his truck, where he kept them when they were not being circulated. Sherrer testified that he was "off-the-clock" when he was circulating the

petition, though it was during the working time of the other employees, and that he never spoke to any of the foremen concerning the circulation of the petition in their departments and none of them asked him what he was doing. He testified that he took the petitions to Stephenson's office on February 7 and left them with Cannon in Stephenson's absence.

Stephenson admitted that after Sherrer spoke with him, he told other supervisory employees of his conversation with Sherrer concerning the petition, and that he told them it would be permissible for the petition to be circulated during working time "in the same manner that any other similar thing had been handled before."

Myra Connelly, who obtained some 50 signatures, testified that she asked and obtained permission from Chelette to circulate the petition, that having heard that it was in the capping room, she asked Fewox, the foreman for it, that he told her it was on his tool chest, and that he got it from there and passed it to her on her request. Connelly spent some hour and a half circulating the petition on her own shift, and then stayed over for another hour on the evening shift, on which she performed no productive work whatsoever. She was on the clock the entire time, though Chelette, who admitted that he had given her permission to circulate the petition on both shifts, testified that he had not understood that she would be on the clock on the night shift.[10]

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[10]Though Connelly testified that she was paid for the night-shift time but not for the day-shift time, she was apparently in error as to the latter, since all the time was recorded as hours worked and since Chelette admitted authorizing such record on the day shift. It is therefore found that she was also paid for the day-shift time.

There was also evidence in Connelly's case of actual interference with her job. Thus her foreman, Clayton Durrance, testified that it was necessary for him to put a replacement on Connelly's job during the time she was passing the petition and that he complained to Chelette that Connelly was spending too much time away from her job with the petition. Chelette informed Durrance that he had given her permission to circulate it. Having learned from Connelly that she was also going to pass the petition on the evening shift, Durrance warned Jones, the foreman on that shift, about the "jam" he had gotten into that morning concerning the petition, but Jones stated that Chelette had already called him in and told him that "they would be around with it tonight."

Connelly's activities not only began with Chelette, they ended with him. Thus, Connelly testified that after she finished obtaining signatures on it she left it in Chelette's office on his desk, *because she did not know what else to do with it*. There was no evidence as to how it found its way from there back into Sherrer's hands.

The General Counsel also offered the testimony of a number of employee witnesses as to the circulation of the petition in the capping room, on the fruit yard, and among the sectionizers. It was plain from all the evidence that all employees who gave any consideration to the petition — and a total of 634 signed it — had necessarily stopped work to read and to sign the petition. There was testimony also that in some cases there was discussion and explanation between the solicitor and the employees, and that in other cases the solicitor stopped and talked with employees who were busy at work. It was also apparent that the time spent

by the circulators (the petition was circulated as many as three times in some departments) far exceeded that spent in the past on such things as collections, contributions, "get well" cards, etc.

Respondent developed evidence that at least among the sectionizers the work was not interfered with, since the individual employees took fruit from a moving belt only when they needed it, and that in any case the sectionizers, being piece-rate workers, were free to take out time as they wished (i. e., though recorded as time worked, the sectionizers received no compensation for it, because they were producing nothing at the time). This evidence is to be compared, of course, with Durrance's futile complaints concerning Connelly and with the evidence summarized in the preceding paragraph.

When finally delivered at Stephenson's office on February 7 there were a total of 8 different petitions, with 634 signatures on 18 pages. Stephenson testified that he checked through the names against the payroll of the 7th, and found 25 duplications and 16 terminations, thereby reducing the net to 593, or a percentage of 76.2 percent of the total number of 778 employees at the time.

What the entire evidence concerning the petition shows is that although Stephenson failed in his efforts to persuade Holly to lead a decertification movement, he had nevertheless succeeded otherwise in accomplishing his overall plan as outlined in his Christmas talk. The predicted "incentive" to throw out the Teamsters had not only been posted as promised, but Respondent handled its offer of benefits so as to prevent the Union from claiming credit for accomplish-

ing anything, also as Stephenson had prophesied. To insure the fomenting of further dissatisfaction, Respondent, by its notice of January 16 cast upon the Union the blame for the failure of the employees to receive the promised wage increase, and extended an invitation to all employees to apply to Stephenson for "information."

When the expected movement developed, in the form of Sherrer, Respondent, though previously forbidding the solicitation of *union membership during working time*, now openly permitted, encouraged, and assisted the solicitation of *defections*, not only during the working time of the employees themselves, but during that of the solicitors. It is therefore concluded and found under all the circumstances disclosed by the record that the petition and its circulation were inspired, encouraged, and assisted by Respondent.

11. Withdrawal of recognition; unilateral grant of benefits

On February 17, Respondent notified the Union that by reason of the petitions which it had received from the employees and the expiration of the certification year, it would be illegal for it to continue to recognize the Union as the bargaining representative of its employees, in that it was "apparent that [the Union did] not represent a majority of our employees in an appropriate unit." Though Wingate requested a further meeting, Respondent adhered to its position.

On February 20, Respondent announced to its employees that it was putting into effect the wage increase, which the Union had rejected, retroactive to December 16; and on

March 13, it similarly announced that it was putting into effect an improved hospitalization plan.

12. Concluding findings

The factual findings in the preceding sections obviate need for little more than a brief statement of ultimate facts and conclusions. The findings under Sections 1 through 4, *supra*, for example, do not establish that Respondent was guilty of a refusal to bargain in good faith at any time prior to the end of the October negotiations. Indeed, through a combination of bad luck and bad bargaining techniques the Union had permitted the negotiations to proceed in such a manner as to create a situation in which Respondent's own alleged lack of good faith could not be tested. See e. g., *Times Publishing Co.*, 72 NLRB 676, at p. 683.

The negotiations, when finally resumed on December 18 are to be viewed in the light of such preceding events as the private meeting and the freeze, as well as in the light of succeeding events, particularly the Stephenson-Holly conversations, the wage offer, and the petition. Insofar as the meeting itself and the preceding events are concerned, the chief points of significance are listed under Section 6, *supra*. Considered alone, they show that after delaying unreasonably the resumption of negotiations at a crucial point, Respondent came into the meeting with no intention of negotiating. Though Bowden knew, through Stephenson, of the private meeting, he flatly refused to discuss the Union's last proposal or to offer anything else at the time, assigning the specious claim that Wingate's changes had rendered discussions futile. Then Walker, purporting to use Wingate's strike threat as justification, avoided making a request for

a temporary suspension, despite his knowledge of Teague's threat a week earlier. Though it be assumed that some reasonable suspension would have been in order, Respondent was required at a minimum to state its position and to request consideration. Its failure to do so and its outright refusal to enter into discussions of any sort, in purported reliance on Wingate's threat constituted, of course, a refusal to bargain.[11] Respondent's lack of good faith was emphasized by its prior knowledge of Teague's published statement. In deed, Bowden's invitation that the employees strike and get it over with suggested strongly, under all the circumstances, that Respondent was interested not in bargaining to reach an agreement but in provoking a strike by not reaching one.

The subsequent events only emphasized and reinforced the foregoing findings. These facts speak for themselves: Respondent's failure at any time to announce readiness to resume negotiations. Stephenson's talk with Holly, and his strenuous attempt to spark a defection movement. The handling of the wage offer so as to foment further dissatisfaction and to give further impetus to a decertification movement. The outright assistance to the circulation of the petition among the employees. The further evasion and delay of the Union's attempts to procure a meeting during the period when the petition was being circulated. The refusal to negotiate further at the end of the January 28 meeting, and the failure again to notify the Union when it was ready

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[11] Inasmuch as the actual occurrence of a strike does not terminate the obligation to bargain, *N.L.R.B.* v. *U. S. Cold Storage Corp.*, 203 F. 2d 924, 928 (C. A. 5), cert. den. 346 U. S. 818, enforcing 96 NLRB 1108, 1109, a mere threat to strike offers no defense.

to resume negotiations. The unilateral wage increase and the unilateral grant of an improved hospitalization plan.

Thus, the entire evidence surrounding the events which followed the December 18 meeting showed unmistakably that Respondent, exploiting the emergency created by the freeze, deliberately framed a course of conduct to avoid bargaining while it inspired, encouraged, and assisted a decertification movement. But it is settled law that a Union's majority status cannot be defeated by defections which follow the employer's commission of such unfair labor practices. *Medo Corp.* v. *N. L. R. B.*, 321 U. S. 678, 687; *Frank Bros. Co.* v. *N. L. R. B.*, 321 U. S. 702, 704; *N. L. R. B.* v. *Southeastern Rubber Mfg. Co.*, 213 F. 2d 11, 15 (C. A. 5); *N. L. R. B.* v. *Lovvorn*, 172 F. 2d 293 (C. A. 5); *N. L. R. B.* v. *Poultry Enterprises, Inc.*, 207 F. 2d 522, 525 (C. A. 5); *Cathey Lumber Co.*, 86 NLRB 157, 168, enfd. 185 F. 2d 1021 (C.A. 5); *N. L. R. B.* v. *Parma Water Lifter Co.*, 211 F. 2d 258, 263 (C. A. 9); *N. L. R. B.* v. *Idaho Egg Products, Inc.*, 229 F. 2d 821, 823 (C. A. 9).[12]

It is therefore concluded and found on the entire evidence that, at all times on and after December 18, 1957, Respondent refused to bargain with the Union within the meaning of Section 8 (a) (5) of the Act. It is further concluded and

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[12]Even assuming that the defections were not attributable to the unfair labor practices, Respondent was not entitled to decide for itself that the Union had lost its representative status and to refuse to deal with it further, for that was a matter for the Board to determine upon orderly decertification proceedings. *N.L.R.B.* v. *Sanson Hosiery Mills*, 195 F. 2d 350, 352 (C. A. 5), (cited in *Cone Bros. Contracting Co.* v. *N. L. R. B.*, 235 F. 2d 37, 43 (C. A. 5)). Meanwhile, Respondent was obligated to continue dealing with the Union. *Brooks* v. *N.L.R.B.*, 348 US 96, 103.

The petitions here did not reach the Board; they came to rest in Respondent's hands.

found on the basis of unrefuted testimony by a number of witnesses that the strike was caused by Respondent's refusal to bargain, and that it was an unfair labor practice strike from its inception.

C. *Interference, restraint, and coercion; solicitation of strikers*

The General Counsel offered the testimony of numerous striking employees to a variety of coercive statements made by members of Respondent's supervisory staff both before and after the strike began. The bulk of the evidence concerned solicitation of strikers to abandon the strike and to return to work, sometimes under express or implied threats that they would lose their jobs and/or be replaced, and sometimes with promises of preferment for jobs or retention in future employment. In some cases Respondent offered no refutation. In other cases where denials were made, there were some instances where credibility can be resolved from facets of the testimony regarding the particular incidents, while in other cases the resolution must turn on consideration of the entire evidence as it discloses the course of conduct in which Respondent's supervisors were engaged. We start with the evidence which relates specifically to the solicitation of the strikers.

Alice Zorn testified, without denial, that Foreman Jerry Sikes solicited her at her home, informing her that if she wanted her job she should come back to work the next day, and that if she did not, she would be replaced.

J. F. Tadlock, an old employee with 15 years of service, testified that Robert L. Rexford (maintenance foreman and

Stephenson's son-in-law) spoke to him on the picket line, expressing surprise at seeing Tadlock there and suggesting that he quit picketing and return to work. Rexford followed up his solicitation later by a visit with Mrs. Tadlock on a Sunday morning in Tadlock's absence. Mrs. Tadlock testified that during a conversation of some 25 to 30 minutes, Rexford urged her to persuade her husband to return to work, stating among other things, that the Company had "fixed it" before the strike that the strikers could not win, and that he wished to take care of Tadlock by seeing that he worked until he reached retirement age.

C. R. Shuman also testified to a conversation with Rexford on the picket line when Rexford called him over and made "compliments" about his stupidity in walking out and quitting his job and expressed concern for Shuman's wife and children. Shuman testified that Rexford concluded by saying, ". . . The Company has got it fixed before you all came out, that you are not going to win or anything."

Rexford admitted having the conversations with the Tadlocks, but denied knowing Shuman and denied having any conversation with him. Rexford also denied making the remarks which the Tadlocks attributed to him. He testified that he went to the Tadlock home to get some buttermilk (he sometimes kept animals at the Tadlock place), but got a cool reception, and left after a few minutes without either asking for or getting the buttermilk which was the alleged reason for his visit. He testified to nothing which he and Mrs. Tadlock discussed during their conversation.

Rexford's testimony cannot be credited over the cumulative (and to an extent mutually corroborative) testimony

of the General Counsel's witnesses. Rexford's visit was an obvious follow-up to his unsuccessful solicitation of Tadlock on the picket line. In Shuman's case, although there was no connection between it and the Tadlock solicitation, it is significant that substantially the same type of coercive statement was attributed to Rexford as in Mrs. Tadlock's case, i. e., the Company had it fixed before the strike that the strikers could not win. Furthermore, it is incredible that Rexford, in view of his length of service, his position, and his relationship to Stephenson, would not have known an employee who had worked for Respondent for 13 years, as Shuman had.

Arthur J. Sanders testified that Claude Scroggins, his foreman, told him that "if [he] wanted [his] damn job back, [he] had better come on back." He testified further that Scroggins called him again on the same day and told him that if he did not report by 6 o'clock the next morning, his card would be pulled. Scroggins denied calling Sanders and denied making the statements which Sanders attributed to him.

Vada Watson, Nellie B. Wilkinson, and Aimie Smith testified without denial, to solicitations by foremen that they return to work.

Irby Brimlow testified to a conversation with his foreman, Kelley, on the picket line, while Kelley's car was blocked by a train across the siding, during which Kelley urged him to return to work and backed his arguments with statements that the Company intended to install automatic machine

peelers altogether (Brimlow was a hand peeler), but that he would take care of Brimlow on other jobs if he would return to work.

Kelley admitted having the conversation with Brimlow and admitted having told him that he ought to come back to work, but denied that automatic peelers were mentioned, though he admitted that the Company had in fact been putting in machine peelers. Kelley, who was obviously hard of hearing, admitted that he did not hear half of what Brimlow said, and testified that Brimlow always acted as if he, too, were hard of hearing.

There are two circumstances which require acceptance of Brimlow's testimony. The first is that Respondent did not call Kelley's son, who Brimlow testified was in the car. The second was that the record showed that both Kelley and Brimlow were hard of hearing, and that the conversation could not have occurred under the circumstances as Kelley described them. Thus, Kelley claimed that Brimlow had stopped at the curb on the opposite side of the road from the car, that he kept his motor running, and that there was also the noise of the switching train. Brimlow testified in comparison that he walked up to the car, that he did not think the motor was running, that Kelley spoke loudly, and that he had no difficulty understanding what Kelley said. Though it is believable that an intelligent conversation could have been carried on between these two comparatively deaf witnesses under the circumstances which Brimlow testified to, it is not believable under the circumstances which Kelley

described, particularly in view of his admission that he did not hear half of what Brimlow had said.[13]

Alice Lasseter and George N. (Nevils) Jackson testified to a number of conversations with foreman, Gray Nolin, and C. B. Cannon, superintendent of the juice plant, on January 17, 18, and 20. Both had worked on Friday and Saturday, but had gone back on Monday only to report that they were joining the strike.

Lasseter testified that both on Friday morning and Friday afternoon Nolin made talks to a group of employees (in Cannon's presence and with indications of his endorsement) during which Nolin stated in part that the employees who continued working would keep their seniority rights and their jobs as long as the Company had any work at all for them to do, but that the strikers would lose their (unemployment) compensation, their Blue Cross, and their jobs.

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[13]Johnson Byrd testified to solicitation by his brother, Ivy Byrd, and by Norman Fowler, a foreman. Fowler denied that any solicitation took place in his presence but admitted that the brothers talked together out of his earshot. Respondent conceded that Ivy Byrd was promoted to a supervisory job on January 28 but denied that he was a supervisor prior to that time. Though considerable testimony was offered on that issue, and though Byrd's job as plant checker met some of the qualifications for supervisory status, the record in the representation proceeding (10-RC-3582; 12-RC-11) showed that the classification of plant checker was discussed at the hearing in that proceeding, with apparent agreement on all sides that the job fell within the unit, and the Board's Decision and Direction of Election issued on November 23, 1956, specifically included the classification of plant checker. Furthermore, Byrd's name was contained on the list of eligible voters for the election on January 28-29. There being no evidence that Byrd's classification was changed at any time prior to his promotion on January 28, it is concluded and found that the General Counsel failed to establish that Byrd possessed supervisory status at the time either of the foregoing incident or of other alleged unfair labor practices committed by Byrd prior to January 28, concerning which the General Counsel also offered testimony.

She testified further that on Saturday afternoon when the employees were discussing, in Cannon's presence, some of the problems which the strike had created, Cannon told them, speaking "confidentially," that Stephenson said that the strikers who did not come back by Monday would not have a job, that the Company lawyer had just come from winning a strike in Cocoa, and that the Union did not have a leg to stand on. Lasseter testified further that on Monday when she informed Nolin that she was joining the strike, he shouted at her that the minute that he could get someone to put in her place, she would not have a job.

Jackson's testimony was corroborative of Lasseter's concerning Cannon's statement on Saturday afternoon, and he testified similarly that when he reported to Nolin on Monday that he was joining the strike, Nolin told him it meant the same as quitting, because he would not have a job. Jackson also testified that on Friday morning Nolin informed him that he had the names of the strikers listed on a paper in Cannon's office, that "those boys would not be back," and that he would hate to put Jackson's name on the list. Jackson testified to a further conversation with Nolin on Friday or Saturday concerning Jackson's brother-in-law, Johnson Byrd, who was on strike. Nolin remarked in part that he would hate to see Byrd lose his job, and gave Jackson permission to leave the job and speak to Byrd (who was across the street) about quitting the strike. When Jackson returned, Nolin inquired how Byrd had talked, and Jackson reported that he was going to stay out.

Nolin and Cannon testified in denial of all statements of significance which Lasseter and Jackson had attributed to them. Both denied having had any conversations with

Lasseter except on Monday; and according to their testimony, their conversations then with Lasseter and Jackson were related to reports which Lasseter, Jackson, and J. D. McLeod made of threats to them and their children and their fears of what would happen if they continued to work. However, Lasseter (on cross) and Jackson and McLeod (on rebuttal) denied that they had reported any such threats or fears to Nolin and Cannon.

There was also testimony concerning a few incidents before the strike. Holly testified that after the posting of the Company's wage offer, he had a conversation concerning it with Cannon, who stated that the employees had better accept the proposal and kick out the Union — "that bunch of gangsters and racketeers" — because the employees would get along much better if they went along with Stephenson. Cannon denied having any such conversation with Holly.

Charley Widner testified that around January 10, he had a discussion with his superintendent, Victor Backus, concerning the freeze, during which he commented that the Union seemed to be slow in doing anything for the employees. Backus replied that if the employees would vote the Union out, as they had done at Stokely-Bordo, the Company would give them a raise, and everything would be all right.

Though Backus denied stating that the employees would get a raise if they voted the Union out, his testimony was noteworthy for the fact that on all other points he testified that *he did not think* he had done or said what Widner testified to. Because of his uncertainty, Backus' testimony cannot be credited over Widner's positive testimony, which is accepted.

Edwin T. Norris testified that a few days before the strike, his foreman, Robert Hall, questioned him about when the strike would start and whether he was going out when it did. When Norris stated that he did not intend to go out, Hall continued that the employees who went on strike would probably lose their jobs, that it would be best for the employees not to strike because they would get better pay if they did not, and (referring to the Company's wage offer) that if the employees did not have a Union, they would get better pay anyway.

Hall, though admitting a conversation concerning the strike, denied making the statements which Norris attributed to him. He testified that Norris called him over and volunteered the statement that he did not belong to the Union and did not intend to join it or to go out on strike.

Leonard Gray and J. B. Batson testified that about a week before the strike there were discussions concerning the Union and the strike among a group of employees, which included Thomas Leo Brown; that Jack Milner (sometimes spelled Miller in the record), a foreman in another department, came up during the discussion and questioned Gray and Batson as to whether they intended to go out on strike. Each stated he would. In Gray's case, Milner warned that if he went on strike, he would be "hard-timed" and might be fired.

Milner flatly denied participating in any such conversation and denied hearing any such discussion concerning a possible strike. Indeed, Milner's eagerness to deny was such that he sometimes injected his denials before the question was finished. Respondent also called Brown, a nonstriker,

who also denied being present during any such conversation, and who answered all questions concerning it with a flat, "No, sir."

Concluding Findings

As the foregoing summary shows, numerous witnesses for the General Counsel testified to a series of incidents, both before and during the strike, during which Respondent's supervisors were engaged in the same general type of interrogation, solicitation, and coercive statements designed to restrain the employees from engaging in protected concerted activities. In some instances there was direct or indirect corroboration, and in others (of simple solicitation), no denials were offered. Furthermore, the number of the incidents and the similarity of the conduct involved gave finally such cumulative weight to the testimony as itself to afford strong, though indirect, mutual corroboration. The denials of Respondent's witnesses, where made, were insufficient to overcome the cumulative preponderant weight of such testimony, which is credited. It is therefore concluded and found that Respondent's supervisors in fact made the statements substantially as testified to by the General Counsel's witnesses.

It is further concluded and found, in the context of the events shown by the record, that by its interrogation of employees concerning participation in Union (strike) activities, by its threats of discharge and of other economic reprisals and its promises of benefits to restrain employees from engaging in strike activities, by its promises of benefits conditioned on the rejection or elimination of the Union as the representative of the employees, by its attempted

inducement of, and its assistance to the circulation of, the employee petitions (see Section B, 10, *supra*), and by granting a unilateral wage increase and unilaterally changing its hospitalization plan (see Section B, 11, *supra*), Respondent engaged in interference, restraint, and coercion of employees within the meaning of Section 8 (a) (1) of the Act.

D. *Discrimination*

1. The discharge of the strikers

It was stipulated near the close of the hearing that a list of the dischargees which Respondent offered in evidence was a correct list of all the strikers who were *replaced* and discharged. (Appendix A lists the names of the 274 employees who were so discharged.) The General Counsel thereupon amended his complaint, without objection, to conform the names to those covered by the stipulation and the exhibits. The stipulation also established that Respondent notified each of the strikers by letter that he had been replaced on his job and was therefore discharged, but did not establish the dates of the letters or the dates of mailing, though there was testimony by a few witnesses as to the dates or the approximate dates on which the letters were received.

Since the employees were discharged because they were on strike, a *prima facie* case of discrimination under Section 8 (a) (3) was plainly made out, *Radio Officers Union* v. *N. L. R. B.*, 347 U. S. 17, 39-40, unless the evidence sustains Respondent's defense that the strike resulted solely from economic causes, and that it was, therefore, entitled to terminate the strikers' employment, as it did, after replacing

them. *Collins Baking Co.* v. *N. L. R. B.*, 193 F. 2d 483, 486 (C. A. 5). It has been found, however, that the strike was caused directly by Respondent's unfair labor practice, i. e., a refusal to bargain on and after December 18, 1957. The strikers therefore remained employees, and their employment could not be terminated by replacement and discharge. *N. L. R. B.* v. *Mackay Radio & Telegraph Co.*, 304 U. S. 333, 347; *N. L. R. B.* v. *U. S. Cold Storage Corp.*, 203 F. 2d 924, 927 (C. A. 5); *Bentley Lumber Co.* v. *N. L. R. B.*, 180 F. 2d 641, 642 (C. A. 5); *Collins Baking Co.* v. *N. L. R. B.*, *supra*; *Dunkirk Broadcasting Corp.*, 120 NLRB No. 196.

It is therefore concluded and found that by discharging the strikers, Respondent engaged in unfair labor practices proscribed by Section 8 (a) (3) and (1).

2. The eviction of strikers

Respondent owns a number of houses and apartments (duplexes) which contain a total of 31 units. Stephenson testified that the Company maintained the policy "pretty much of renting to our employees," and that there was a constant waiting list of applicants. Respondent concedes in its brief that the units were rented to employees at a very nominal rental.

Following the strike and the replacement of the strikers, Respondent notified 10 of their tenant strikers (see Appendix B) around February 28 and March 1 to vacate the premises they were occupying. In some "split situations," where someone else in the striker's family continued to work, notices to vacate were not given; otherwise Respondent sought to terminate the tenancies of all striking ten-

ants. One of the tenants, J. W. Montgomery, obeyed the notice and vacated on May 9. He testified, however, that he was unable to find housing at a comparable price and had to pay a higher rent.

On April 18, Respondent began an eviction proceeding in the County Court against Arthur McKinney (husband of one of the tenant strikers), but on the suggestion of the County Judge, a Union-employed attorney brought an injunction proceeding directly in the Circuit Court on behalf of the nine tenants other than Montgomery to obtain an adjudication of their defense that Respondent was in effect coercing the strikers in their right to bargain collectively. A motion to dismiss was pending before the Circuit Court at the time of the hearing herein, and none of the nine remaining tenants had vacated the premises.

The General Counsel offered testimony concerning the cases of seven of the tenants, of their attempt to pay rent beyond the specified termination dates, and of Respondent's refusal to accept such rent.

Respondent's position is simply that the rental to employees under the foregoing circumstances is not a term or condition of employment (citing *N. L. R. B.* v. *Bemis Brothers Bag Company*, 206 F. 2d 33 (C. A. 5), and it points to the fact that company housing had never been a subject matter of bargaining in the past and that no proposal concerning it was made during the last negotiations. The latter consideration is, of course, not determinative. There may be many reasons why, in the give and take of collective bargaining, particular conditions of employment may be excluded, by accident, oversight, or design, from the ne-

gotiations, leaving the employer free to operate unilaterally. Furthermore, the *Bemis* case, *supra*, is distinguishable on its face from the present situation for, as the court pointed out, housing will properly fall within the statutory requirement if it is shown that rentals are low enough to be in fact partial remuneration for services and, therefore, in effect wages. That distinction is here met by the undisputed facts shown in the record, i. e., the small number of units available, Respondent's policy of renting to employees, the constant demand and the *nominal rental*. It is therefore concluded and found that the rental of the housing units was a term or condition of employment within the meaning of Section 8 (a) (3) of the Act.

Since it has been found in the preceding section that Respondent had discriminatorily discharged the tenant strikers because of their participation in the strike (a protected concerted activity), its subsequent attempts to evict them similarly constituted a discrimination against them and an interference with their right to engage in concerted activities. *J. A. Bentley Lumber Company*, 83 NLRB 803, 810, 817-18, 824, enfd. 180 F. 2d 641 (C. A. 5); *L. J. Williams Lumber Company*, 93 NLRB 1672, 1676-7; cf. *Knickerbocker Plastic Corporation*, 104 NLRB 514, 538, enfd. 218 F. 2d 917 (C. A. 9).

Aside from the foregoing, even were it found that the housing rental was not a term or condition of employment within the meaning of Section 8 (a) (3), the evidence would nevertheless establish a violation of Section 8 (a) (1), in that the strikers were plainly discriminated against (i. e., treated differently) for the sole reason that they were on

strike, albeit the discrimination was not such as fell under the literal proscription of Section 8 (a) (3).[14] *L. J. Williams Lumber Company*, Supplemental Decision, 96 NLRB 635, 636, *United States Gypsum Company*, 90 NLRB 964, 969, 995. Thus, whether viewed as simple discrimination, or as interference with the employees' rights to engage in concerted activities, the attempted evictions were an unlawful restraint on the employees' rights as guaranteed by Section 7 and 13 of the Act. Cf. *Knickerbocker Plastics* case, *supra*, at page 538.

It is therefore concluded and found that by attempting to evict the strikers who had been discriminatorily discharged and by the actual eviction of J. W. Montgomery, Respondent engaged in unfair labor practices proscribed by Section 8 (a) (3) and (1) of the Act.

Upon the basis of the foregoing findings of fact and upon the entire record in the case, the undersigned makes the following:

Conclusions of Law

1. The Union is a labor organization within the meaning of Section 2 (5) of the Act.

2. All production and maintenance employees, includ-

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[14] It is well settled that discrimination against employees because of their engagement in protected concerted activities, which for some reason does not qualify as discrimination within the meaning of Section 8 (a) (3), constitutes unlawful interference, restraint, and coercion. *N.L.R.B.* v. *Phoenix Mutual Life Insurance Company*, 167 F. 2d 983, 988 (C. A. 7) cert. denied, 335 U.S. 845; *Gullett Gin Company* v. *N.L.R.B.*, 179 F. 2d 499, 502 (C. A. 5) reversed on another point, 340 U.S. 361; *Mack Smith Garment Company*, 107 NLRB 84.

ing truck drivers, electrical workers, plant checkers, and floorladies' helpers, but excluding all office clerical employees, new construction and installation employees, professional and technical employees, guards, watchmen, scale operators, and supervisors as defined in the Act, employed in Respondent's plant in Lake Wales, Florida, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

3. At all times since February 6, 1957, the Union has been the exclusive representative of all the employees in said unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment and other conditions of employment.

4. On December 18, 1957, and at all times thereafter, Respondent failed and refused to bargain collectively with the Union as the exclusive representative of said employees, thereby engaging in unfair labor practices proscribed by Section 8 (a) (5) and (1) of the Act.

5. By discharging the striking employees whose names are listed in Appendix A, and by attempting to evict the striking employees whose names are listed in Appendix B, Respondent discriminated in regard to hire or tenure of employment, or any term or condition of employment, to discourage membership in the Union, thereby engaging in unfair labor practices proscribed by Section 8 (a) (3) and (1) of the Act.

6. By interrogating its employees concerning participation in Union (strike) activities, by threatening discharge and other economic reprisals and promising benefits to re-

strain employees from engaging in strike activities, by promising benefits conditioned on the rejection or elimination of the Union as the representative of the employees, by attempted inducement of and assisting the circulation of a decertification petition, and by granting a unilateral wage increase and unilaterally changing its hospitalization plan, Respondent engaged in interference, restraint, and coercion of employees in the exercise of their rights guaranteed by Section 7 of the Act, thereby engaging in unfair labor practices proscribed by Section 8 (a) (1) of the Act.

7. The aforesaid unfair labor practices having occurred in connection with the operation of Respondent's business, as set forth in Section I, above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States, and substantially affect commerce within the meaning of Section 2 (6) and (7) of the Act.

The Remedy

As I have found that Respondent has engaged in certain unfair labor practices, I shall recommend that it cease and desist therefrom and that it take certain affirmative action, outlined below, which I find necessary to remedy and to remove the effects of the unfair labor practices and to effectuate the policies of the Act. Though the recommended remedies are all convential ones, a word of explanation is necessary concerning the discrimination against the strikers.

As all the dischargees were on strike at the time of their discharges, the provision for back pay will run only from the date of their respective applications for reinstatement

on the termination of, or their abandonment of, the strike. *Dunkirk Broadcasting Corp.*, 120 NLRB No. 196; *Ford Radio and Mica Corporation*, 115 NLRB 1046, 1048-9; *Happ Brothers Company Inc.*, 90 NLRB 1513, 1518.

The remedy which is being recommended as to evicted employee J. W. Montgomery comports with that in *W. T. Carter and Brother*, 90 NLRB 2020, 2027, and cases there cited. Of course Respondent's obligation to furnish housing to the tenant strikers will terminate whenever they cease to be employees of Respondent. Cf. *L. J. Williams Lumber Company*, Supplemental Decision, 96 NLRB 635.

For reasons which are stated in *Consolidated Industries, Inc.*, 108 NLRB 60, 61, and cases there cited, I shall recommend a broad cease and desist order.

RECOMMENDATIONS

Upon the basis of the above findings of fact and conclusions of law, I recommend that Respondent, its officers, agents, successors, and assigns shall:

1. Cease and desist from:

(a) Refusing to bargain collectively with the Union as the exclusive representative of its employees in the unit herein found to be appropriate;

(b) Discouraging membership in the Union, or in any other labor organization of its employees, by discharging them or by evicting, or threatening to evict, them from their leased premises because of their Union membership

or activities, or by discriminating in any other manner in regard to their hire or tenure of employment or any term or condition of employment, except to the extent permitted in Section 8 (a) (3) of the Act;

(c) Interrogating its employees concerning participation in Union activities, threatening discharge or other economic reprisals or promising benefits to restrain employees from engaging in strike activities, promising benefits conditioned on the rejection or elimination of the Union as the representative of the employees, attempting to induce and assisting the circulation of a decertification petition, and granting, unilaterally, wage increases or other benefits; and

(d) In any other manner interfering with, restraining, or coercing its employees in the exercise of their right to self-organization, to form labor organizations, to join or assist the Union, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purposes of collective bargaining or other mutual aid or protection, or to refrain from any or all such activities except to the extent permitted in Section 8 (a) (3) of the Act.

2. Take the following affirmative action:

(a) Upon request, bargain collectively with the Union as the exclusive representative of its employees in the unit herein found to be appropriate;

(b) Offer to the employees whose names are listed

in Appendix A, upon their application on the termination or abandonment of the strike, immediate and full reinstatement to their former or substantially equivalent positions, without prejudice to their seniority or other rights and privileges, and make them whole in accordance with the Board's remedial policies (*Chase National Bank*, 65 NLRB 827; *Crossett Lumber Company*, 8 NLRB 440, *F. W. Woolworth Company*, 90 NLRB 289) for any loss of earnings which they may suffer from the date of their respective applications for reinstatement to the date of their actual reinstatement, dismissing, if necessary, any persons hired by it on and after January 17, 1958;

(c) Dismiss all pending eviction proceedings against any of the employees whose names are listed in Appendix B, and notify each of said employees that it has withdrawn its former termination of tenancy and notice to vacate the leased premises;

(d) Offer to J. W. Montgomery immediate occupancy of his former or substantially equivalent leased premises, on the same terms accorded other employees, and make him whole for any loss he may have suffered by reason of his eviction by payment to him of a sum of money equal to that which he has had to pay as rental for other leased premises from the date of his eviction to the date he is offered occupancy in the manner set forth above, plus such additional expense as he may have incurred during said period as a direct result of his eviction, but less the amount he would normally have paid to Respondent as rent for his leased premises during said period;

(e) Make available to the Board and its agents all

records which are necessary for the determination of reinstatement rights and back pay due;

(f) Post at its plant at Lake Wales, Florida, copies of the notice attached hereto and marked Appendix C. Copies of said notice, to be furnished by the Regional Director for the Twelfth Region, shall, after being signed by Respondent's representative, be posted by Respondent immediately upon receipt thereof and maintained by it for sixty (60) consecutive days thereafter in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced or covered by any other materials; and

(g) Notify the Regional Director for the Twelfth Region, in writing, within twenty (20) days from the date of the receipt of this Intermediate Report and Recommended Order what steps Respondent has taken to comply herewith.

It is further recommended that, unless on or before twenty (20) days from the date of the receipt of this Intermediate Report and Recommended Order, Respondent notifies said Regional Director in writing that it will comply with the foregoing recommendations, the National Labor Relations Board issue an order requiring Respondent to take the action aforesaid.

Dated at Washington, D. C., this 28 day of August 1958.

(Signed) GEO. A. DOWNING
George A. Downing
Trial Examiner

APPENDIX A

List of strikers who were replaced and discharged

Aeree, Oradee
Allen, Annie
Arnold, Curtis W.
Ayers, Robert J.
Bailey, W. L.
Ballard, Mose
Barfield, D. J.
Basinger, Edward
Batson, Agnes
Batson, J. B.
Bennett, W. G.
Bishop, Chalmas
Bohannon, W. A.
Bowen, Sallie
Bowen, Tommie
Bowman, W. T.
Boyett, J. S.
Boyett, Mildred
Boyne, Allen E.
Britt, Willie C.
Brooker, H. P.
Brown, C. R.
Burch, W. J.
Byrd, Johnson
Caldwell, Luria
Carnley, Frank
Carruth, R. J.
Carter, Melvin
Ciszek, John
Clark, Harry S.
Clayborne, B. G.
Clayborn, H. L.
Collins, Gressom
Collins, Troy
Davis, J. T.
Davidson, Clyde
Day, Lex
Dukes, Ralph
Dunaway, Harold
Duncan, Carl E.
Durrance, Daisy
Edenfield, Fulton
Evans, William
Ezell, Shelby
Farabee, Melton
Fillingim, Junior
Fuqua, T. J.
Galloway, E. E.
Garrett, O. J.
Gay, Bobby F.
Glisson, Billy J.
Godwin, Newvell
Goff, D. R.
Goff, L. J.
Weld, Thurlow E.
Widner, Charlie
Wilkinson, Nellie
Williams, A. V.

Granger, Thomas W.
Grantham, Walter
Gray, Leonard
Hale, Mary
Hall, Christine
Hall, J. H.
Hall, Theodore
Hammond, R. R.
Harbuck, Edward C.
Harper, Leroy
Harrison, B. L.
Harrison, Willie E.
Harvard, Leonard J.
Helm, Luther
Hewitt, J. W.
Hollard, William T.
Holly, Fred
Holly, J. E.
Hoover, Sherman
Huggins, Bennie
Hunter, Allan
Hurst, John
Hutchingson, V. A.
Jackson, G. N.
Johnson, Clyde
Johnson, Robert D.
Johnson, Thomas
Johnson, Virgie C.
Johnson, Jr., Willie
Kilgo, Wesley
Knight, Albert H.
Knowles, Burley V.
Knowles, Johnie M.
Kyser, Shelly
Land, Merlin O.
Lasseter, Alice
Lassiter, Evie
Lassiter, L. T.
Leatherwood, Henry
Lesley, W. G.
Love, Donald E.
Lyles, Hugh L.
McKay, Alex
McKinney, Estelle
McKean, Carlie L.
McLeod, J. D.
Mathews, Lowell Thomas
Mayer, Lillie
Montgomery, J. W.
Moore, Fred S.
Moore, Mack
Mullins, J. B.
Newmons, Dora
Nobles, Billy
Williams, S. E.
Wilson, Page
Wood, Louey
Wyrosdick, D. R.
Norris, E .T.
Oliver, J. G.
Owen, James H.
Owen, William H.
Owens, William W.
Pabst, John W.

Partain, Earnest L.
Peavey, Earnest
Peavey, Jr., Luther
Pelton, Stanley L.
Pence, Verna Mae
Pence, W. P.
Peterson, Ernest Ray
Pickles, C. R.
Pickles, H. L.
Pitts, J. D.
Pope, Fred
Raines, Elmo C.
Rhoden, Hardie
Richardson, Jr., William H.
Riley, Tom
Robbins, C. W.
Roberts, Sr., Benton
Sanders, Arthur J.
Scroggins, Raymond L.
Scroggins, Roselle
Shepherd, Jr., Tommie
Shiver, M. W.
Shuman, C. R.
Sikes, Elie
Sikes, Zelma
Sims, James H.
Sims, Frank
Singletary, Doris
Slocumb, Jr., William E.
Spivey, Alene
Spivey, Joseph W.
Stanford, Leroy
Steedley, H. D.
Stern, Alice
Stern, T. M.
Stoudmire, Fred
Tadlock, J. F.
Tate, P. L.
Tew, Beamon
Tucker, Monroe
Turner, George
Underwood, J. S.
Waldrop, Leonard
Walker, John Henry
Ward, Algerine
Waters, Clifton
Watson, Vada
Weeks, Louise
Wyresdick, John T.
Zorn, Alice
Zorn, William H.
Austin, Evelyn
Ayers, Helen
Baker, Ada
Barnett, Beulah
Batson, Lunie Mae
Beasley, Ruby
Bees, Ruby Grey
Birge, Elois
Blair, Melba
Boyette, Agnes
Boykine, Evelyn Louise
Braswell, Chester
Brimlow, Irby
Brimlow, Mable
Brooker, Mattie Mae

Brown, Carrie B.
Brown, Susie
Burgess, C. D.
Byrd, Euna Vae
Carnal, Mae
Cawby, Sadie
Clark, Addie P.
Clark, Lannie
Clayborn, Ada Lee
Clayborn, Dean
Conner, Hazel
Crawford, Eloise
Davis, Julia A.
Day, Carthell
Deal, Frances
Deal, Thelma
Dice, Agnes
Dice, Rena Mae
Drawdy, Mattie Lou
Driggers, Gerald
Dunaway, Margaret
Dunford, Anna Belle
Edmondson, Veleria
Fillingim, Katherine
Gilmore, Lutie Mae
Goff, Bessie
Goff, Cozette Margarette
Griner, Ada
Hagler, Cleo
Hall, Beatrice
Hammond, Ruby Lee
Hill, Tillman L.
Howze, Eveline
Huggins, Mary
Huggins, Raymond
Huchingson, Lois
Hutto, Essie
Jackson, Annie Lois
James, Hellon
Lewis, Dortha
Lewis, John C.
McKinney, Eula Lee
McKinnon, Laverne
Marshall, Pauline
Maxwell, Allie P.
Mears, Thomas R.
Meyer, Juanita
Mitchell, Elsie
Monday, Etta
Montgomery, Mary Nell
Moore, Lilly
Moreland, Ruth
Napier, Mary
Newmons, Curtis D.
O'Neal, Lommie
Payne, Elizabeth
Pickles, Waltrone
Price, Edna
Raines, Fannie
Register, Bertie M.
Revels, J. M.
Royal, Carl
Smith, Annie
Stephenson, Myrtle

Stinson, Nettie
Sturgis, Daniel
Sturgis, James Lee
Temples, L. G.
Terrell, Carrie Lee
Thompson, Mittie
Thompson, Wm. A.
Tucker, A. P.
Tucker, Yuless W.
Walker, Leona
Ward, Vera Mae
Waters, Marie
Waters, Nancy
Weaver, Loraine
Wheeler, Thelma
Wiggins, Betty
Williams, Melrose
Williams, Maude L.
Williams, Myrl
Wyrosdick, Janette
Yeatmen, Ellsworth M.
Young, Recy

APPENDIX B

List of tenant strikers

Johnson Byrd
O. J. Garrett
James H. Hall
Edward C. Harbuck
Estelle McKinney
J. W. Montgomery
James Oliver
Lois Pickles
Charley Shuman
Vada Watson

APPENDIX C

NOTICE TO ALL EMPLOYEES

PURSUANT TO
THE RECOMMENDATIONS OF A TRIAL EXAMINER of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, we hereby notify our employees that:

WE WILL NOT discourage membership in, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, Citrus, Cannery, Food Processing and Allied Workers, Drivers, Warehousemen and Helpers, Local No. 173, or in any other labor organization of our employees, by discharging them or by evicting, or threatening to evict, them from their leased premises because of their Union membership or activities, or by discriminating in any other manner in regard to their hire or tenure of employment or any term or condition of employment, except to the extent permitted in Section 8 (a) (3) of the Act.

WE WILL NOT interrogate our employees concerning participation in Union (strike) activities, threaten discharge or other economic reprisals or promise benefits to restrain employees from engaging in strike activities, promise benefits conditioned on the rejection or elimination of the Union as the representative of our employees, attempt to induce or assist the circulation of

a decertification petition, or grant a unilateral wage increase, or other unilateral benefits.

WE WILL NOT in any other manner interfere with, restrain, or coerce our employees in the exercise of their right to self-organization, to form labor organizations, to join or assist INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, Citrus, Cannery, Food Processing and Allied Workers, Drivers, Warehousemen and Helpers, Local No. 173, or any other labor organization to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purposes of collective bargaining or other mutual aid or protection, or to refrain from any or all such activities, except to the extent permitted in Section 8 (a) (3) of the Act.

WE WILL offer to the employees whose names are listed in Appendix A of the Trial Examiner's report, upon their application on the termination or abandonment of the strike, immediate and full reinstatement to their former or substantially equivalent positions, without prejudice to their seniority or other rights and privileges, and make them whole for any loss of earnings which they may suffer from the date of their applications for reinstatement to the date of their actual reinstatement, dismissing, if necessary, any persons hired on and after January 17, 1958.

WE WILL dismiss all pending eviction proceedings against any of the employees whose names are listed in Appendix B of the Trial Examiner's report, and notify each of said employees that we have withdrawn our former termination of tenancy and notice to vacate leased premises.

WE WILL offer to J. W. Montgomery immediate occupancy of his former or substantially equivalent leased premises, on the same terms accorded other employees, and make him whole for any loss he may have suffered by reason of his eviction, in the manner set forth in the Trial Examiner's recommendations.

WE WILL, upon request, bargain collectively with said INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, Citrus, Cannery, Food Processing and Allied Workers, Drivers, Warehousemen and Helpers, Local No. 173, as the exclusive representative of all our employees in the bargaining unit described below, with respect to rates of pay, wages, hours of employment, and other conditions of employment, and if an agreement is reached embody such understanding in a signed contract. The bargaining unit is:

> All production and maintenance employees, including truck drivers, electrical workers, plant checkers, and floorladies' helpers, but excluding all office

clerical employees, new construction and installation employees, professional and technical employees, guards, watchmen, scale operators, and supervisors as defined in the Act, employed in our plant in Lake Wales, Florida.

FLORIDA CITRUS CANNERS COOPERATIVE
(Employer)

Dated _____ By _____
(Representative) (Title)

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

MOTION TO DISMISS THE COMPLAINT

(Number and Title Omitted)

COMES NOW, Florida Citrus Canners Cooperative, the Respondent in the above numbered case, and moves to dismiss the complaint herein, upon the following grounds, to-wit:

1. The evidence and testimony adduced at the hearing does not sustain the allegations of complaint.

2. The testimony and evidence considered as a whole does not sustain or prove the allegations made in the complaint.

3. The General Counsel has not met the burden of proof, required to prove said allegations.

4. The allegations of the complaint have not been proven by a preponderance of the evidence.

5. No unfair labor practice within the meaning of the Labor Management Relations Act, 1947, has been proven to have been committed by the Respondent.

6. The Respondent has not been proven guilty of the commission of any unfair labor practice within the meaning of the Labor Management Relations Act, 1947, by a preponderance of the testimony.

7. There is no substantial evidence or testimony to support a finding that the Respondent committed any unfair labor practices within the meaning of the Labor Management Relations Act, 1947, on the record considered as a whole.

RESPECTFULLY SUBMITTED, this 29th day of September, 1958.

HAMILTON & BOWDEN
(Signed) By O. R. T. BOWDEN
(O. R. T. Bowden)
Counsel for Respondent

Address of Counsel:

Hamilton & Bowden
Suite 401, Smith Building
Jacksonville 2, Florida

EXCEPTIONS TO THE INTERMEDIATE REPORT OF THE TRIAL EXAMINER

(Number and Title Omitted)

COMES NOW, FLORIDA CITRUS CANNERS CO-OPERATIVE, by its undersigned counsel, the Respondent in the above-styled cause, and excepts to the Intermediate Report of the Trial Examiner dated August 28, 1958, and the findings, conclusions and decisions in said Intermediate Report, and the rulings and decisions of the said Trial Examiner in the hearing in said cause, the "Conclusions of Law", the "Recommendations" and the "Notice to all Employees" attached to said Intermediate Report, upon the following grounds:

1. Said findings, conclusions and decisions are not supported by a preponderance of the evidence.

2. Said findings, conclusions, decisions and recommendations do not effectuate the policies of the Labor Management Relations Act of 1947.

3. Said findings, conclusions and decisions in said Intermediate Report are not supported by substantial evidence on the record considered as a whole.

4. Said findings, conclusions, decisions and recommendations are not supported by law.

The Respondent, upon the following grounds, further excepts to the following specific findings, conclusions, de-

cisions, rulings and/or recommendations of the Trial Examiner in said Intermediate Report:

5. Respondent excepts to the finding, " . . . which was based on charges duly filed and served . . . " (I.R. Page 67, lines 1 and 2)

6. Respondent excepts to the rulings on its pre-hearing motions as well as to its motions made during trial which are referred to in the Intermediate Report. (I.R. Page 68, Lines 1-12)

7. Respondent excepts to the find, " . . . but there was no evidence of active participation on their part, ..." (I. R. Page 72, Lines 19-20)

8. Respondent excepts to the finding, "That circumstance was the fact that Roberts left the Union and went with the management of Minute Maid around the first of September. That alliance with the 'opposition' not only placed Roberts in such a position which the General Counsel apparently felt would jeopardize any reliance on him as a witness, but it developed that Roberts' relations with his former associates were such that they made no attempt after his defection to review with him either the course of his negotiations or the results which he had obtained to date. Neither was the Union able to locate or obtain Roberts' notes, though he claimed to have left them in the Union's office." (I.R. Page 72, Line 29 through Line 7 of Page 73)

9. Respondent excepts to the finding, " . . . the evidence indicated not only a mutual misunderstanding, ..." (I. R. Page 73, Lines 17-18)

10. Respondent excepts to the finding, "Being without knowledge of the areas of agreement and disagreement as developed by Roberts, ..." (I.R. Page 74, Lines 17-19)

11. Respondent excepts to the finding, "The testimony is somewhat in conflict as to the content of Wingate's statement at the end of the latter meeting. Wingate testified that as the meeting reached adjournment, he stated that it was necessary to expedite the negotiations because the employees were anxious for a contract and that he proposed to take into account all arguments, pro and con, on the issues in disagreement, according to his impression of the negotiations, and would put together a workable agreement which he felt that both parties could live with, ..." (I.R. Page 78, Line 27 through Line 9 of Page 79)

12. Respondent excepts to the finding, "The discussions proceeded on a frank and open basis, with Stephenson showing no hesitancy in stating his personal position and in permitting Wingate to copy the notations which represented his objections to certain provisions and his suggestions as to others. Both the notes and the discussions indicated that agreement was not only possible but was near; certainly there was neither suggestion or indication that negotiations could not proceed and be successfully concluded on the basis of the new proposal. Thus, Stephenson's private reactions were wholly at variance with the expressions of purported shock as later voiced by Bowden (on

December 18 and January 28) and his representations that the new proposal had so prejudiced the negotiations as to prevent its use, even as a basis for discussions." (I.R. Page 82. Line 25 through Line 6 of Page 83)

13. Respondent excepts to the finding, "Briefs on both sides contain reliable analyses of the extent to which the new proposal included new matter. What the evidence as a whole showed was that Wingate attempted in good faith to draw up the sort of a proposal which he had adverted to at the close of the October 31 meeting, and that the end product could have served as easily, or more easily, as the basis for ensuing negotiations as any proposal then on the table. The private talks alone demonstrated the latter." (I.R. Page 83, Lines 29-36)

14. Respondent excepts to the finding, "On this occasion, therefore, it was the Company which assumed the burden of going forward." (I.R. Page 83, Lines 14-16)

15. Respondent excepts to the finding, "Wingate persisted, however, asking that the Company state its position on the Union's proposal before discussing the freeze. Bowden again stated that there was no point in going into the proposal because his examination of it showed that it was far different from anything which had been discussed or agreed upon in the past, and, on Wingate's inquiry, mentioned certain clauses which Wingate had changed or redrafted despite agreement which had been reached in the past; but, he added, the Company was not going into that, because Walker wanted to speak. On Wingate's inquiry,

Stephenson agreed that Bowden's statement also reflected his position." (I.R. Page 86, Line 23 through Line 2 of Page 87)

16. Respondent excepts to the finding, "1. This time it was the Company which delayed setting up a negotiation meeting, at a crucial time, when it appeared from the private meeting (without benefit of counsel) that agreement was near." (I R. Page 88, Lines 12-15)

17. Respondent excepts to the finding, "3. There were no negotiations as such, and it was plain from the entire evidence that Respondent came into the meeting with no intention of negotiating on contract proposals, but only on its contemplated request for a suspension of negotiations." (I.R. Page 88, Lines 24-28)

18. Respondent excepts to the finding, "4. Though Walker's purpose in attending was to forestall or delay the threatened strike (as publicized by Teague) by pleading for a temporary suspension of negotiations, he assigned Wingate's implied strike threat as justification for his failure to say anything. If sincerity be assumed in Walker's testimony, then Wingate's verification of the strike danger would only have augmented the necessity for Walker's plea." (I.R. Page 88, Line 30 through Line 4 of Page 89)

19. Respondent excepts to the finding, "5. There remained ample time (despite the threatened deadline) for Walker to have presented fully his views as to how the freeze would affect the Company's ability to continue in negotiation at the time and to plead for consideration from

the Union; nor could Walker assume in advance that he would fail in his attempt. Indeed, despite Bowden's apparent invitation of a strike, none was called for a full 30 days after the meeting." (I.R. Page 89, Lines 6-13)

20. Respondent excepts to the finding, "6. Even if failure were to be assumed, the emergency conditions then existing may well have justified Respondent in breaking off unilaterally, subject to resuming negotiations when its situation had clarified. Thus, in no case could Walker's plea have been futile; it was required, both from the standpoint of protecting Respondent's legal position and of performing its legal obligation to bargain." (I.R. Page 89, Lines 15-21)

21. Respondent excepts to the finding, "7. Though this breakoff was plainly chargeable to Respondent, it at no time thereafter notified the Union that it was ready to resume negotiations on the contract proposals." (I.R. Page 89, Lines 23-26)

22. Respondent excepts to the finding, "Though testifying that it was Holly who injected the company union question into the conversation, Stephenson refrained from testifying what his own response to the suggestion was." (I.R. Page 94, Lines 25-28)

23. Respondent excepts to the finding, "Holly's long time employment, his long time connection with the former union, his absence of a position with Teamsters, and his criticism of that union, its representatives, and the nego-

tiations obviously marked him as promising material to lead a defection movement." (I.R. Page 94, Line 30 through Line 2 of Page 95)

24. Respondent excepts to the finding, "Stephenson's promises and predictions, as Holly testified to them, later came through exactly as prophesied, save that the wage offer was posted a week earlier than Stephenson had indicated. Later developments, summarized infra, showed that Respondent assisted the movement to 'kick the Teamsters out,' which Holly's testimony showed that Stephenson was intent on sponsoring and assisting." (I. R. Page 95, Lines 4-10)

25. Respondent excepts to the finding, "Finally, Holly was an impressive witness both on direct and on cross-examination, while Stephenson, in comparison, sometimes reflected on cross-examination a demeanor and manner of reluctance in testifying which prevented acceptance of his testimony at face value. Holly's testimony is therefore credited." (I.R. Page 95, Lines 12-17)

26. Respondent excepts to the finding, "The circumstances which are of chief significance in evaluating the foregoing testimony are Stephenson's admissions, in the light of the Company's breakoff at the December meeting, that the failure to submit a contract was intentional and his failure to indicate willingness to resume negotiations. His vague reference to Respondent's 'full proposals' was, of course, meaningless. He obviously could not have meant Respondent's original proposal, which had been subjected to many amendments, modifications, and deletions

during the course of the Roberts' negotiations and which had finally been laid aside at the end of the September 19 meeting, at Bowden's own suggestion. Obviously, also, he could not have meant the old AFL contract, which had been widely departed from by modifications and deletions during the October negotiations. And, of course, if he intended to reoffer either the Company's original proposal or the old AFL contract, he would necessarily have stated which of the two he meant, and would also have been obligated to specify whether he was offering the one he designated in its form as originally tendered or in some other form as amended and modified by subsequent agreement." (I.R. Page 97, Line 27 through Line 14 of Page 98)

27. Respondent excepts to the finding, "Certainly, Stephenson was not referring to Wingate's proposals as submitted during the October negotiations, for the parties had been unable to reach agreement on those. Finally, he could not have meant Wingate's final proposal (despite the aura of agreement which he and Wingate had managed to generate during their private meeting), because Respondent had flatly refused to negotiate on that on December 18." (I.R. Page 98, Lines 16-23)

28. Respondent excepts to the finding, "There was thus no proposal in existence at the time which Stephenson could have pointed to as embodying what Respondent was willing to sign and enter into. Nor did Stephenson suggest then or later that Respondent intended to prepare and submit such a proposal of its own or that Respondent was ready to resume negotiations on some one of the Wingate proposals". (I.R. Page 98, Lines 25-31)

29. Respondent excepts to the finding, "Though the foregoing considerations alone strongly suggest that Stephenson in fact made no reference to Respondent's contract proposals, there is further evidence which resolves the point, confirming Wingate's testimony that Stephenson stated that the Company had no contract proposal to accompany its wage offer. Thus, the Christmas day conversations between Holly and Stephenson showed plainly that Respondent intended and planned its wage offer so as to induce employees who were dissatisfied with the negotiations to start a decertification movement. The withholding of a contract proposal obviously fitted into that plan to foment employee dissatisfaction, for Teamsters would thereby be prevented from claiming credit for having accomplished anything in the negotiations, which Stephenson acknowledged was one of Respondent's aims. Indeed, it was largely because of Respondent's failure to accompany its wage offer with a contract proposal that the Union members voted rejection of the wage offer in the meeting next to be referred to." (I.R. Page 99, Lines 1-19)

30. Respondent excepts to the finding, "Though Respondent offered the testimony by R. D. Chelette (superintendent of concentrate) as to an occasion on which he had allegedly given permission to a Mrs. Newvell Connelly (or Godwin) and Theodore Hall to canvass the employees concerning their preference on a shift equalization, the General Counsel called Hall in rebuttal, who testified that it was Chelette who had requested Mrs. Connelly and him to canvass the employees to ascertain their desires. Furthermore, though Chelette answered a leading question as to

the giving of permission to the union, his testimony concerning the circumstances showed that the matter arose in June 1957, after the AFL contract had expired, and that Mrs. Connelly raised the question. Hall's testimony is credited." (I.R. Page 107, Lines 26-38)

31. Respondent excepts to the finding, "Thus her foreman, Clayton Durrance, testified that it was necessary for him to put a replacement on Connelly's job during the time she was passing the petition and that he complained to Chelette that Connelly was spendng too much time away from her job with the petition." (I.R. Page 110, Lines 2-7)

32. Respondent excepts to the finding, "It was plain from all the evidence that all employees who gave any consideration to the petition — and a total of 634 signed it — had necessarily stopped work to read and to sign the petition. There was testimony also that in some cases there was discussion and explanation between the solicitor and the employees, and that in other cases the solicitor stopped and talked with employees who were busy at work. It was also apparent that the time spent by the circulators (the petition was circulated as many as three times in some departments) far exceeded that spent in the past on such things as collections, contributions, 'get well' cards, etc." (I.R. Page 110, Line 26 through Line 4 of Page 111)

33. Respondent excepts to the finding, "This evidence is to be compared, of course, with Durrance's futile complaints concerning Connelly and with the evidence sum-

marized in the preceding paragraph." (I.R. Page 111, Lines 13-16)

34. Respondent excepts to the finding, "What the entire evidence concerning the petition shows is that although Stephenson failed in his efforts to persuade Holly to lead a decertification movement, he had nevertheless succeeded otherwise in accomplishing his overall plant as outlined in his Christmas talk. The predicted 'incentive' to throw out the Teamsters had not only been posted as promised, but Respondent handled its offer of benefits so as to prevent the Union from claiming credit for accomplishing anything, also as Stephenson had prophesied. To insure the fomenting of further dissatisfaction, Respondent, by its notice of January 16 cast upon the Union the blame for the failure of the employees to receive the promised wage increase, and extended an invitation to all employees to apply to Stephenson for 'information'." (I.R. Page 11, Line 26 through Line 6 of Page 112)

35. Respondent excepts to the finding, "When the expected movement developed, in the form of Sherrer, Respondent, though previously forbidding the solicitation of *union membership during working time*, now openly permitted, encouraged, and assisted the solicitation of *defections*, not only during the working time of the employees themselves, but during that of the solicitors. It is therefore concluded and found under all the circumstances disclosed by the record that the petition and its circulation were inspired, encouraged, and assisted by Respondent." (I.R. Page 112, Lines 8-16)

36. Respondent excepts to the finding, "Indeed, through a combination of bad luck and bad bargaining techniques the Union had permitted the negotiations to proceed in such a manner as to create a situation in which Respondent's own alleged lack of good faith could not be tested." (I.R. Page 113, Lines 11-15)

37. Respondent excepts to the finding, "Considered alone, they show that after delaying unreasonably the resumption of negotiations at a crucial point, Respondent came into the meeting with no intention of negotiating. Though Bowden knew, through Stephenson, of the private meeting, he flatly refused to discuss the Union's last proposal or to offer anything else at the time, assigning the specious claim that Wingate's changes had rendered discussions futile . . . . . Though it be assumed that some reasonable suspension would have been in order, Respondent was required at a minimum to state its position and to request consideration. Its failure to do so and its outright refusal to enter into discussions of any sort, in purported reliance on Wingate's threat constituted, of course, a refusal to bargain. Respondent's lack of good faith was emphasized by its prior knowledge of Teague's published statement. Indeed, Bowden's invitation that the employees strike and get it over with suggested strongly, under all the circumstances, that Respondent was interested not in bargaining to reach an agreement but in provoking a strike by not reaching one." (I.R. Page 113, Lines 25-33, Page 114, Lines 1-14)

38. Respondent excepts to the finding, "The subsequent events only emphasized and reinforced the foregoing findings. These facts speaks for themselves: Respondent's failure at any time to announce readiness to resume negotiations. Stephenson's talk with Holly, and his strenuous attempt to spark a defection movement. The handling of the wage offer so as to foment further dissatisfaction and to give further impetus to a decertification movement. The outright assistance to the circulation of the petition among the employees. The further evasion and delay of the Union's attempts to procure a meeting during the period when the petition was being circulated. The refusal to negotiate further at the end of the January 28 meeting, and the failure again to notify the Union when it was ready to resume negotiations. The unilateral wage increase and the unilateral grant of an improved hospitalization plan." (I.R. Page 114, Line 16 through Line 2 of Page 115)

39. Respondent excepts to the finding, "Thus, the entire evidence surrounding the events which followed the December 18 meeting showed unmistakably that Respondent, exploiting the emergency created by the freeze, deliberately framed a course of conduct to avoid bargaining while it inspired, encourages, and assisted a decertification movement." (I.R. Page 115, Lines 4-9)

40. Respondent excepts to the finding, "It is therefore concluded and found on the entire evidence that, at all times on and after December 18, 1957, Respondent refused to bargain with the Union within the meaning of Section 8 (a) (5) of the Act. It is further concluded and found on

the basis of unrefuted testimony by a number of witnesses that the strike was caused by the Respondent's refusal to bargain, and that it was an unfair labor practice strike from its inception." (I.R. Page 115, Line 22 through Line 4 of Page 116)

41. Respondent excepts to the finding, "Even assuming that the defections were not attributable to the unfair labor practices, Respondent was not entitled to decide for itself that the Union had lost its representative status and to refuse to deal with it further, for that was a matter for the Board to determine upon orderly decertification proceedings." (I.R. Page 115, Lines 27-31)

42. Respondent excepts to the finding, "Furthermore, it is incredible that Rexford, in view of his length of service, his position, and his relationship to Stephenson, would not have known an employee who had worked for Respondent for 13 years, as Shuman had." (I.R. Page 118, Lines 8-12)

43. Respondent excepts to the finding, "Though it is believable that an intelligent conversation could have been carried on between these two comparatively deaf witnesses under the circumstances which Brimlow testified to, it is not believable under the circumstances which Kelley described, particularly in view of his admission that he did not hear half of what Brimlow had said." (I.R. Page 119, Line 27 through Line 2 of Page 120)

44. Respondent excepts to the finding, "Indeed, Milner's eagerness to deny was such that he sometimes injected his

denials before the question was finished." (I.R. Page 123, Lines 31-33)

45. Respondent excepts to the finding, "As the foregoing summary shows, numerous witnesses for the General Counsel testified to a series of incidents, both before and during the strike, during which Respondent's supervisors were engaged in the same general type of interrogation, solicitation, and coercive statements designed to restrain the employees from engaging in protected concerted activities. In some instances there was direct or indirect corroboration, and in other (of simple solicitation), no denials were offered. Furthermore, the number of the incidents and the similarity of the conduct involved gave finally such cumulative weight to the testimony as itself to afford strong, though indirect, mutual corroboration. The denials of Respondent's witnesses, where made, were insufficient to overcome the cumulative and preponderant weight of such testimony, which is credited. It is therefore concluded and found that Respondent's supervisors in fact made the statements substantially as testified to by the General Counsel's witness." (I.R. Page 124, Lines 7-24)

46. Respondent excepts to the finding, "It is further concluded and found, in the context of the events shown by the record, that by its interrogation of employees concerning participation in Union (strike) activities, by its threats of discharge and of other economic reprisals and its promises of benefits to restrain employees from engaging in strike activities, by its promises of benefits conditioned on the rejection or elimination of the Union as the representa-

tive of the employees, by its attempted inducement of, and its assistance to the circulation of, the employee petitions (see Section B, 10, *supra*), and by granting a unilateral wage increase and unilaterally changing its hospitalization plan (see Section B, 11, *supra*), Respondent engaged in interference, restraint, and coercion of employees within the meaning of Section 8 (a) (1) of the Act." (I.R. Page 124, Lines 26-33, Page 125, Lines 1-6)

47. Respondent excepts to the finding, "It is therefore concluded and found that by discharging the strikers, Respondent engaged in unfair labor practices proscribed by Section 8 (a) (3) and (1)." (I.R. Page 126, Lines 13-15)

48. Respondent excepts to the finding, "It is therefore concluded and found that the rental of the housing units was a term or condition of employment within the meaning of Section 8 (a) (3) of the Act." (I.R. Page 128, Lines 10-13)

49. Respondent excepts to the finding, "Since it has been found in the preceding section that Respondent had discriminatorily discharged the tenant strikers because of their participation in the strike (a protected concerted activity), its subsequent attempts to evict them similarly constituted a discrimination against them and an interference with their right to engage in concerted activities." (I.R. Page 128, Lines 15-21)

50. Respondent excepts to the finding, "Aside from the foregoing, even were it found that the housing rental was

not a term or condition of employment within the meaning of Section 8 (a) (3), the evidence would nevertheless establish a violation of Section 8 (a) (1), in that the strikers were plainly discriminated against (i. e., treated differently) for the sole reason that they were on strike, albeit the discrimination was not such as fell under the literal proscription of Section 8 (a) (3)." (I.R. Page 128, Line 27 through Line 2 of Page 129)

51. Respondent excepts to the finding, "It is therefore concluded and found that by attempting to evict the strikers who had been discriminatorily discharged and by the actual eviction of J. W. Montgomery, Respondent engaged in unfair labor practices proscribed by Section 8 (a) (3) and (1) of the Act." (I.R. Page 129, Lines 12-16)

52. Respondent excepts to the finding, "3. At all times since February 6, 1957, the Union has been the exclusive representative of all the employees in said unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment and other conditions of employment." (I.R. Page 130, Lines 10-14)

53. Respondent excepts to the finding, "4. On December 18, 1957, and at all times thereafter, Respondent failed and refused to bargain collectively with the Union as the exclusive representative of said employees, thereby engaging in unfair labor practices proscribed by Section 8 (a) (5) and (1) of the Act." (I.R. Page 130, Lines 16-20)

54. Respondent excepts to the finding, "5. By discharging the striking employees whose names are listed in Ap-

pendix A, and by attempting to evict the striking employees whose names are listed in Appendix B, Respondent discriminated in regard to hire or tenure of employment, or any term or condition of employment, to discourage membership in the Union, thereby engaging in unfair labor practices proscribed by Section 8 (a) (3) and (1) of the Act." (I.R. Page 130, Lines 22-29)

55. Respondent excepts to the finding, "6. By interrogating its employees concerning participation in Union (strike) activities, by threatening discharge and other economic reprisals and promising benefits to restrain employees from engaging in strike activities, by promising benefits conditioned on the rejection or elimination of the Union as the representative of the employees, by attempted inducement of and assisting the circulation of a decertification petition, and by granting a unilateral wage increase and unilaterally changing its hospitalization plan, Respondent engaged in interference, restraint, and coercion of employees in the exercise of their rights guaranteed by Section 7 of the Act, thereby engaging in unfair labor practices proscribed by Section 8 (a) (1) of the Act." (I. R. Page 130, Line 31 through Line 10 of Page 131)

56. Respondent excepts to the finding, "7. The aforesaid unfair labor practices having occurred in connection with the operation of Respondent's business, as set forth in Section I, above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States, and substantially affect commerce within the meaning of Section 2 (6) and (7) of the Act." (I.R. Page 131, Lines 12-17)

57. Respondent excepts to the finding, "As I have found that Respondent has engaged in certain unfair labor practices, I shall recommend that it cease and desist therefrom and that it take certain affirmative action, outlined below, which I find necessary to remedy and to remove the effects of the unfair labor practices and to effectuate the policies of the Act. Though the recommended remedies are all conventional ones, a word of explanation is necessary concerning the discrimination against the strikers." (I.R. Page 131, Lines 21-29)

58. Respondent excepts to every recommendation made by the Trial Examiner as follows: (I.R. Page 31, Lines 20-32, Pages 133, 134 and 135, Lines 1-28)

"Upon the basis of the above findings of fact and conclusions of law, I recommend that Respondent, its officers, agents, successors, and assigns shall:

"1. Cease and desist from:

"(a) Refusing to bargain collectively with the Union as the exclusive representative of its employees in the unit herein found to be appropriate;"

"(b) Discouraging membership in the Union, or in any other labor organization of its employees, by discharging them or by evicting, or threatening to evict, them from their leased premises because of their Union membership or activities, or by discriminating in any other manner in regard to their hire or tenure of employment or any

term or condition of employment, except to the extent permitted in Section 8 (a) (3) of the Act;

"(c) Interrogating its employees concerning participating in Union activities, threatening discharge or other economic reprisals or promising benefits to restrain employees from engaging in strike activities, promising benefits conditioned on the rejection or elimination of the Union as the representative of the employees, attempting to induce and assisting the circulation of a decertification petition, and granting, unilaterally, wage increases or other benefits; and

"(d) In any other manner interfering with, restraining, or coercing its employees in the exercise of their right to self-organization, to form labor organizations, to join or assist the Union, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purposes of collective bargaining or other mutual aid or protection, or to refrain from any or all such activities except to the extent permitted in Section 8 (a) (3) of the Act.

"2. Take the following affirmative action:

"(a) Upon request, bargain collectively with the Union as the exclusive representative of its employees in the unit herein found to be appropriate.

"(b) Offer to the employees whose names are listed in Appendix A, upon their application on the termination

or abandonment of the strike, immediate and full reinstatement to their former or substantially equivalent positions, without prejudice to their seniority or other rights and privileges, and make them whole in accordance with the Board's remedial policies (*Chase National Bank*, 65 NLRB 827; *Crossett Lumber Company*, 8 NLRB 440; *F. W. Woolworth Company*, 90 NLRB 289) for any loss of earnings which they may suffer from the date of their respective applications for reinstatement to the date of their actual reinstatement, dismissing, if necessary, any persons hired by it on and after January 17, 1958;

"(c) Dismiss all pending eviction proceedings against any of the employees whose names are listed in Appendix B, and notify each of said employees that it has withdrawn its former termination of tenancy and notice to vacate the leased premises;

"(d) Offer to J. W. Montgomery immediate occupancy of his former or substantially equivalent leased premises, on the same terms accorded other employees, and make him whole for any loss he may have suffered by reason of his eviction by payment to him of a sum of money equal to that which he has had to pay as rental for other leased premises from the date of his eviction to the date he is offered occupancy in the manner set forth above, plus such additional expense as he may have incurred during said period as a direct result of his eviction, but less the amount he would normally have paid to Respondent as rent for his leased premises during said period;

"(e) Make available to the Board and its agents all records which are necessary for the determination of reinstatement rights and back pay due;

"(f) Post at its plant at Lake Wales, Florida, copies of the notice attached hereto and marked Appendix C. Copies of said notice, to be furnished by the Regional Director for the Twelfth Region, shall, after being signed by Respondent's representative, be posted by Respondent immediately upon receipt thereof and maintained by it for sixty (60) consecutive days thereafter in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced or covered by any other materials; and

"(g) Notify the Regional Director for the Twelfth Region, in writing, within twenty (20) days from the date of the receipt of this Intermediate Report and Recommended Order what steps Respondent has taken to comply herewith.

"It is further recommended that, unless on or before twenty (20) days from the date of the receipt of this Intermediate Report and Recommended Order, Respondent notifies said Regional Director in writing that it will comply with the foregoing recommendations, the National Labor Relations Board issue an order requiring Respondent to take the action aforesaid."

59. Respondent excepts to the Appendix to said Intermediate Report, couched in the following language:

"NOTICE TO ALL EMPLOYEES

PURSUANT TO
THE RECOMMENDATIONS OF A TRIAL EXAMINER of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, we hereby notify our employees that:

WE WILL NOT discourage membership in, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, Citrus, Cannery, Food Processing and Allied Workers, Drivers, Warehousemen and Helpers, Local No. 173, or in any other labor organization of our employees, by discharging them or by evicting, or threatening to evict, them from their leased premises because of their Union membership or activities, or by discriminating in any other manner in regard to their hire or tenure of employment or any term of condition of employment, except to the extent permitted in Section 8 (a) (3) of the Act.

WE WILL NOT interrogate our empoyees concerning participation in Union (strike) activities, threaten discharge or other economic reprisals or promise benefits to restrain employees from engaging in strike activities, promise benefits conditioned on the rejection or elimination of the Union as the representative of our employees, attempt to induce or assist the circulation of a decertification petition, or grant a unilateral wage increase, or other unilateral benefits.

WE WILL NOT in any other manner interfere with, restrain, or coerce our employees in the exercise of their right to self-organization, to form labor organizations, to join or assist INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, W. REHOUSEMEN AND HELPERS OF AMERICA, Citrus, Cannery, Food Processing and Allied Workers, Drivers, Warehousemen and Helpers, Local No. 173, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purposes of collective bargaining or other mutual aid or protection, or to refrain from any or all such activities, except to the extent permitted in Section 8 (a) (3) of the Act.

WE WILL offer to the employees whose names are listed in Appendix A of the Trial Examiner's report, upon their application on the termination or abandonment of the strike, immediate and full reinstatement to their former or substantially equivalent positions, without prejudice to their seniority or other rights and privileges, and make them whole for any loss of earnings which they may suffer from the date of their applications for reinstatement to the date of their actual reinstatement, dismissing, if necessary, any persons hired on and after January 17, 1958.

WE WILL dismiss all pending eviction proceedings against any of the employees whose names are

listed in Appendix B of the Trial Examiner's report, and notify each of said employees that we have withdrawn our former termination of tenancy and notice to vacate leased premises.

WE WILL offer to J. W. Montgomery, immediate occupancy of his former or substantially equivalent leased premises, on the same terms accorded other employees, and make him whole for any loss he may have suffered by reason of his eviction, in the manner set forth in the Trial Examiner's recommendations.

WE WILL, upon request, bargain collectively with said INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, Citrus, Cannery, Food Processing and Allied Workers, Drivers, Warehousemen and Helpers, Local No. 173, as the exclusive representative of all our employees in the bargaining unit described below, with respect to rates of pay, wages, hours of employment, and other conditions of employment, and if an agreement is reached embody such understanding in a signed contract. The bargaining unit is:

> All production and maintenance employees, including truck drivers, electrical workers, plant checkers, and floorladies' helpers, but excluding all office clerical employees, new construction and installation employees, professional and technical employees, guards, watchmen, scale

operators, and supervisors as defined in the Act, employed in our plant in Lake Wales, Florida.

FLORIDA CITRUS CANNERS COOPERATIVE

(Employer)

Dated _____ By _____

(Representative) (Title)

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material."

60. Respondent excepts to Ruling of Louis Libbin, dated June 4, 1958, denying Respondent's Motion for a Bill of Particulars dated May 22, 1958.

61. Respondent excepts to Ruling of Louis Libbin dated June 4, 1958, in regard to certain charges occurring more than six (6) months before charges filed.

62. Respondent excepts to Ruling at hearing on its Motion to Strike dated June 6, 1958.

63. Respondent excepts to Trial Examiner's denial of its Motion for additional time to prepare its defense at the conclusion of General Counsel's case in chief.

64. Respondent excepts to Ruling by Trial Examiner on its Motion for a Bill of Particulars dated June 2, 1958.

RESPECTFULLY SUBMITTED this 29th day of September, 1958.

HAMILTON & BOWDEN
(Signed) By O. R. T. BOWDEN
(O. R. T. Bowden)
Counsel for Respondent

Address of Counsel:

Hamilton & Bowden
Suite 401, Smith Building
Jacksonville 2, Florida

CERTIFICATE OF SERVICE

I certify that I have this day mailed a copy of the foregoing to:

International Brotherhood of Teamsters,
Chauffeurs, Warehousemen & Helpers of
America, Citrus, Cannery, Food Processing
& Allied Workers, Drivers, Warehousemen
& Helpers Local No. 173
P. O. Box 548
Auburndale, Florida

C. J. Hardee, Jr., Esq.
308 Tampa Street
Tampa, Florida

Harold A. Boire, Regional Director
Twelfth Region
National Labor Relations Board
Ross Building
112 East Cass Street
Tampa 2, Florida

(Signed) O. R. T. BOWDEN
O. R. T. Bowden

D-982
124 NLRB No. 163 Lake Wales, Fla.

DECISION AND ORDER

(Number and Title Omitted)

On August 28, 1958, Trial Examiner George A. Downing issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent had engaged in certain unfair labor practices and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the copy of the Intermediate Report attached hereto. Thereafter, the Respondent filed exceptions to the Intermediate Report and a brief in support thereof.

The Board has reviewed the rulings of the Trial Examiner made at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the exceptions and brief, and the entire record in the case, and hereby adopts

the findings, conclusion and recommendations of the Trial Examiner with the following modifications.

The Trial Examiner found that the rentals of the Respondent's housing units were low enough to constitute partial remuneration for services, and in effect, wages. We do not adopt this finding. There is no evidence in the record that the employees who lived in company housing were paid less wages than those who lived elsewhere.

Having found that the strikers were unfair labor practice strikers, their discharge during the strike,[1] even though the Respondent may have assumed that the strikers were engaged in an economic strike, is, of course, violative of the Act. The record shows that Respondent's housing accommodations were rented only to employees or families of employees. Thus, it was as a result of the employer-employee relationship that employees were entitled to live in these accommodations in the first instance. Living nearer to one's place of work than the majority of the employees, and, particularly at a nominal rental, was a substantial advantage for the employee-occupants.[2]

Accordingly, we find that the rental of the housing accommodations of the Respondent was a valuable incident of the employer-employee relationship within the meaning of Section 8 (a) (3) of the Act. The eviction or attempted eviction from these rental units was coercive as well as dis-

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[1] *MacKay Radio and Telegraph Company*, 304 U.S. 333, 345.

[2] See *Climax Spinning Company*, 101 NLRB 1193. Also see *J. A. Bentley Lumber Company*, 83 NLRB 803, 817-818, enf. 180 F. 2d 641 (C.A. 5) where the Board found that the Act had been violated by Employer's eviction of economic strikers prior to replacement because they refused to withdraw from the strike.

criminatory when applied because the employees were on strike, and constituted unlawful interference with their statutory rights. For these reasons, we conclude that Respondent violated Section 8 (a) (1) and 8 (a) (3) of the Act in evicting or attempting to evict employees while they were engaged in an unfair labor practice strike.

The Remedy

Having found that the Respondent had engaged in and is engaging in unfair labor practices in violation of Section 8 (a) (5), 8 (a) (3), and 8 (a) (1) of the Act, we shall adopt the Trial Examiner's remedy provisions with the following modifications:

The Respondent having discriminatorily discharged the employees[3] engaged in an unfair labor practice strike, we shall order the Respondent to offer them immediate and full reinstatement to their former or substantially equivalent positions without prejudice to their seniority or other rights and privileges. We shall also direct the Respondent to reimburse the foregoing employees for any loss of pay they may have suffered by reason of the Respondent's discrimination against them. Although ordinarily a discriminatorily discharged employee is entitled to back pay from the date of discharge, since these employees were on strike at the time of the discharge, we shall follow the Board's practice and award back pay from the date on which the employees made unconditional application for reinstatement or, where no application has been made, from 5 days from the date of this Order to the date of the Respondent's offer of reinstatement. We shall order the Respondent to pay each of

[3]As listed in Appendices A and B.

these employees a sum of money equal to the amount that he or she normally would have earned as wages from the date following his or her unconditional application for reinstatement, or, where no application has been made, from 5 days from the date of this Order to the date of the Respondent's offer of reinstatement, less his or her net earnings during said period.[4]

ORDER

Upon the entire record in this case and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the Respondent, Florida Citrus Canners Cooperative, and its officers, representatives, agents, successors, and assigns shall:

1. Cease and desist from:

(a) Refusing to bargain collectively with the Union as the exclusive representative of its employees in the unit herein found to be appropriate;

(b) Discouraging membership in the Union, or in any other labor organization of its employees, by discharging them or by evicting, or threatening to evict, them from their leased premises because of their Union membership or activities, or by discriminating in any other manner in regard to their hire or tenure of employment or any term or condition of employment, except to the extent permitted in Section 8 (a) (3) of the Act;

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[4] *Dunkirk Broadcasting Corporation*, 120 NLRB 1588, at 1592.

(c) Interrogating its employees concerning participation in Union activities in a manner constituting interference, restraint, or coercion, threatening discharge or other economic reprisals or promising benefits to restrain employees from engaging in strike activities, promising benefits conditioned on the rejection or elimination of the Union as the representative of the employees, attempting to induce and assisting the circulation of a decertification petition, and granting, unilaterally, wage increases or other benefits; and

(d) In any other manner interfering with, restraining, or coercing its employees in the exercise of their right to self-organization, to form labor organizations, to join or assist the Union or any other labor organization, to bargain collectively through representative of their own choosing, and to engage in other concerted activities for the purposes of collective bargaining or other mutual aid or protection, or to refrain from any or all such activities except to the extent permitted in Section 8 (a) (3) of the Act.

2. Take the following affirmative action:

(a) Upon request, bargain collectively with the Union as the exclusive representative of its employees in the unit herein found to be appropriate;

(b) Offer to the employees whose names are listed in Appendix A, immediate and full reinstatement to their former or substantially equivalent positions, without prejudice to their seniority or other rights and privileges, and make whole in the manner set forth in "The Remedy" sec-

tion of the Intermediate Report as modified by "The Remedy" section of the Board's Decision.

(c) Dismiss all pending eviction proceedings against any of the employees whose names are listed in Appendix B, and notify each of said employees that it has withdrawn its former termination of tenancy and notice to vacate the leased premises;

(d) Offer to J. W. Montgomery immediate occupancy of his former or substantially equivalent leased premises, on the same terms accorded other employees, and make him whole for any loss he may have suffered by reason of his eviction by payment to him of a sum of money equal to that which he has had to pay as rental for other leased premises from the date of his eviction to the date he is offered occupancy in the manner set forth above, plus such additional expense as he may have incurred during said period as a direct result of his eviction, but less the amount he would normally have paid to Respondent as rent for his leased premises during said period;

(e) Make available to the Board and its agents all records which are necessary for the determination of reinstatement rights and back pay due;

(f) Post at its plant at Lake Wales, Florida, copies of the notice attached hereto and marked Appendix C.[5] Copies

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[5] In the event that this Order is enforced by a decree of a United States Court of Appeals, there shall be substituted for the words "PURSUANT TO A DECISION AND ORDER", the words "PURSUANT TO A DECREE OF THE UNITED STATES COURT OF APPEALS, ENFORCING AN ORDER."

f said notice, to be furnished by the Regional Director for he Twelfth Region, shall, after being signed by the Respondent's representative, be posted by Respondent immediately upon receipt thereof and maintained by it for ixty (60) consecutive days thereafter in conspicuous places, ncluding all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced r covered by any other material; and

(g) Notify the Regional Director for the Twelfth Region, in writing, within ten (10) days from the date of this Order what steps Respondent has taken to comply herewith.

Dated, Washington, D. C., Oct. 14, 1959.

Boyd Leedom, Chairman

Stephen S. Bean, Member

Joseph Alton Jenkins, Member

John H. Fanning, Member

NATIONAL LABOR RELATIONS BOARD

SEAL)

APPENDIX A

List of strikers who were replaced and discharged

Aeree, Oradee
Allen, Annie
Arnold, Curtis W.
Ayers, Robert J.
Bailey, W. L.
Ballard, Mose
Barfield, D. J.
Basinger, Edward
Batson, Agnes
Batson, J. B.
Bennett, W. G.
Bishop, Chalmas
Bohannon, W. A.
Bowen, Sallie
Bowen, Tommie
Bowman, W. T.
Boyett, J. S.
Boyett, Mildred
Boyne, Allen E.
Britt, Willie C.
Brooker, H. P.
Brown, C. R.
Burch, W. J.
Byrd, Johnson
Caldwell, Luria
Carnley, Frank
Carruth, R. J.
Carter, Melvin
Ciszek, John
Clark, Harry S.
Clayborne, B. G.
Clayborn, H. L.
Collins, Gressom
Collins, Troy
Davis, J. T.
Davidson, Clyde
Day, Lex
Dukes, Ralph
Dunaway, Harold
Duncan, Carl E.
Durrance, Daisy
Edenfield, Fulton
Evans, William
Ezell, Shelby
Farabee, Melton
Fillingim, Junior
Fuqua, T. J.
Galloway, E. E.
Garrett, O. J.
Gay, Bobby F.
Glisson, Billy J.
Godwin, Newvell
Goff, D. R.
Goff, L. J.
Weld, Thurlow E.
Widner, Charlie

Wilkinson, Nellie
Williams, A. V.
Granger, Thomas W.
Grantham, Walter
Gray, Leonard
Hale, Mary
Hall, Christine
Hall, J. H.
Hall, Theodore
Hammond, R. R.
Harbuck, Edward C.
Harper, Leroy
Harrison, B. L.
Harrison, Willie E.
Harvard, Leonard J.
Helm, Luther
Hewitt, J. W.
Hollard, William T.
Holly, Fred
Holly, J. E.
Hoover, Sherman
Huggins, Bennie
Hunter, Allan
Hurst, John
Hutchingson, V. A.
Jackson, G. N.
Johnson, Clyde
Johnson, Robert D.
Johnson, Thomas
Johnson, Virgie C.
Johnson, Jr., Willie
Kilgo, Wesley
Knight, Albert H.
Knowles, Burley V.
Knowles, Johnie M.
Kyser, Shelly
Land, Merlin O.
Lasseter, Alice
Lassiter, Evie
Lassister, L. T.
Leatherwood, Henry
Lesley, W. G.
Love, Donald E.
Lyles, Hugh L.
McKay, Alex
McKinney, Estelle
McKean, Carlie L.
McLeod, J. D.
Mathews, Lowell Thomas
Mayer, Lillie
Montgomery, J. W.
Moore, Fred S.
Moore, Mack
Mullins, J. B.
Newmons, Dora
Nobles, Billy
Williams, S. E.
Wilson, Page
Wood, Louey
Wyrosdick, D. R.
Norris, E. T.
Oliver, J. G.
Owen, James H.
Owen, William H.
Owens, William W.
Pabst, John W.

Partain, Earnest L.
Peavey, Earnest
Peavey, Jr., Luther
Pelton, Stanley L.
Pence, Verna Mae
Pence, W. P.
Peterson, Ernest Ray
Pickles, C. R.
Pickles, H. L.
Pitts, J. D.
Pope, Fred
Raines, Elmo C.
Rhoden, Hardie
Richardson, Jr., William H.
Riley, Tom
Robbins, C. W.
Roberts, Sr., Benton
Sanders, Arthur J.
Scroggins, Raymond L.
Scroggins, Roselle
Shepherd, Jr., Tommie
Shiver, M. W.
Shuman, C. R.
Sikes, Elie
Sikes, Zelma
Sims, James H.
Sims, Frank
Singletary, Doris
Slocumb, Jr., William E.
Spivey, Alene
Spivey, Joseph W.
Stanford, Leroy
Steedley, H. D.
Stern, Alice
Stern, T. M.
Stoudmire, Fred
Tadlock, J. F.
Tate, P. L.
Tew, Beamon
Tucker, Monroe
Turner, George
Underwood, J. S.
Waldrop, Leonard
Walker, John Henry
Ward, Algerine
Walters, Clifton
Watson, Vada
Weeks, Louise
Wyresdick, John T.
Zorn, Alice
Zorn, William H.
Austin, Evelyn
Ayers, Helen
Baker, Ada
Barnett, Beulah
Batson, Lunie Mae
Beasley, Ruby
Bees, Ruby Gray
Birge, Elois
Blair, Melba
Boyette, Agnes
Boykine, Evelyn Louise
Braswell, Chester
Brimlow, Irby
Brimlow, Mable
Brooker, Mattie Mae

Brown, Carrie B.
Brown, Susie
Burgess, C. D.
Byrd, Euna Vae
Carnal, Mae
Cawby, Sadie
Clark, Addie P.
Clark, Lannie
Clayborn, Ada Lee
Clayborn, Dean
Conner, Hazel
Crawford, Eloise
Davis, Julia A.
Day, Cartheli
Deal, Frances
Deal, Thelma
Dice, Agnes
Dice, Rena Mae
Drawdy, Mattie Lou
Driggers, Gerald
Dunaway, Margaret
Dunford, Anna Belle
Edmondson, Veleria
Fillingim, Katherine
Gilmore, Lutie Mae
Goff, Bessie
Goff, Cozette Margarette
Griner, Ada
Hagler, Cleo
Hall, Beatrice
Hammond, Ruby Lee
Hill, Tillman L.
Howze, Eveline
Huggins, Mary
Huggins, Raymond
Hutchingson, Lois
Hutto, Essie
Jackson, Annie Lois
James, Hellon
Lewis, Dortha
Lewis, John C.
McKinney, Eula Lee
McKinnon, Laverne
Marshall, Pauline
Maxwell, Allie P.
Mears, Thomas R.
Meyer, Juanita
Mitchell, Elsie
Monday, Etta
Montgomery, Mary Nell
Moore, Lilly
Moreland, Ruth
Napier, Mary
Newmons, Curtis D.
O'Neal, Lommie
Payne, Elizabeth
Pickles, Waltrone
Price, Edna
Raines, Fannie
Register, Bertie M.
Revels, J. M.
Royal, Carl
Smith, Annie
Stephenson, Myrtle

Stinson, Nettie
Sturgis, Daniel
Sturgis, James Lee
Temples, L. G.
Terrell, Carrie Lee
Thompson, Mittie
Thompson, Wm. A.
Tucker, A. P.
Tucker, Yuless W.
Walker, Leona
Ward, Vera Mae
Waters, Marie
Waters, Nancy
Weaver, Loraine
Wheeler, Thelma
Wiggins, Betty
Williams, Melrose
Williams, Maude L.
Williams, Myrl
Wyrosdick, Janette
Yeatmen, Ellsworth M.
Young, Recy

APPENDIX B

List of tenant strikers

Johnson Byrd
O. J. Garrett
James H. Hall
Edward C. Harbuck
Estelle McKinney
J. W. Montgomery
James Oliver
Lois Pickles
Charley Shuman
Vada Watson

APPENDIX C

NOTICE TO ALL EMPLOYEES

PURSUANT TO
A DECISION AND ORDER

of the National Labor Relations Board, and in order to effectuate the policies of the Labor Management Relations Act, we hereby notify our employees tnat:

WE WILL NOT discourage membership in INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, Citrus, Cannery, Food Processing and Allied Workers, Drivers, Warehousemen and Helpers, Local No. 173, or in any other labor organization of our employees, by discharging them or by evicting, or threatening to evict, them from their leased premises because of their Union membership or activities, or by discriminating in any other manner in regard to their hire or tenure of employment or any term or condition of employment, except to the extent permitted in Section 8 (a) (3) of the Act.

WE WILL NOT interrogate our employees concerning participation in Union (strike) activities, threaten discharge or other economic reprisals or promise benefits to restrain employees from engaging in strike activities, promise benefits conditioned on the rejection or elimination of the Union as the representative of our employees, at-

tempt to induce or assist the circulation of a decertification petition, or grant a unilateral wage increase, or other unilateral benefits.

WE WILL NOT in any other manner interfere with, restrain, or coerce our employees in the exercise of their right to self-organization, to form labor organizations, to join or assist INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, Citrus, Cannery, Food Processing and Allied Workers, Drivers, Warehousemen and Helpers, Local No. 173, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purposes of collective bargaining or other mutual aid or protection, or to refrain from any or all such activities, except to the extent permitted in Section 8 (a) (3) of the Act.

WE WILL offer to the employees whose names are listed in Appendix A, immediate and full reinstatement to their former or substantially equivalent positions, without prejudice to their seniority or other rights and privileges, and make them whole for any loss of pay they have suffered or may suffer by reason of the Respondent's refusal, if any, to reinstate them by payment to each of them a sum of money equal to that which he normally would have earned as wages from the date of his application for reinstatement to the date of the Respondent's offer to reinstate him, or where no

application has been made, from five (5) days from the date of this Order to the date of the Respondent's offer of reinstatement, less his or her net earnings during said period, dismissing, if necessary, any persons hired by it on and after January 17, 1958.

WE WILL dismiss all pending eviction proceedings against any of the employees whose names are listed in Appendix B and notify each of said employees that we have withdrawn our former termination of tenancy and notice to vacate leased premises.

WE WILL offer to J. W. Montgomery immediate occupancy of his former or substantially equivalent leased premises, on the same terms accorded other employees, and make him whole for any loss he may have suffered by reason of his eviction, in the manner set forth in the Trial Examiner's recommendations.

WE WILL, upon request, bargain collectively with said INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, Citrus, Cannery, Food Processing and Allied Workers, Drivers, Warehousemen and Helpers, Local No. 173, as the exclusive representative of all our employees in the bargaining unit described below, with respect to rates of pay, wages, hours of employment, and other conditions of employment, and if an

agreement is reached, embody such understanding in a signed contract. The bargaining unit is:

> All production and maintenance employees, including truck drivers, electrical workers, plant checkers, and floorladies' helpers, but excluding all office clerical employees, new construction and installation employees, professional and technical employees, guards, watchmen, scale operators, and supervisors as defined in the Act, employed in our plant in Lake Wales, Florida.

FLORIDA CITRUS CANNERS
COOPERATIVE
(Employer)

Dated _____ By _____
(Representative) (Title)

This notice must remain posted for sixty (60) days from the date hereof, and must not be altered, defaced, or covered by any other material.

MICRO CARD
TRADE MARK ®

MATTHEW BENDER & COMPANY

- 61

VOL

II

SUPREME COURT, U. S.

Volume II

TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1961

No. 94

NATIONAL LABOR RELATIONS BOARD,
PETITIONER,

vs.

FLORIDA CITRUS CANNERS COOPERATIVE

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

PETITION FOR CERTIORARI FILED MAY 17, 1961
CERTIORARI GRANTED OCTOBER 9, 1961

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OCTOBER TERM, 1961

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FLORIDA CITRUS CANNERS COOPERATIVE

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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[1] BEFORE THE
NATIONAL LABOR RELATIONS BOARD
Twelfth Region.

In the Matter of

FLORIDA CITRUS CANNERS COOPERATIVE

and Case No. 12-CA-307

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, Citrus, Cannery, Food Processing and Allied Workers, Drivers, Warehousemen and Helpers, Local No. 173.

National Guard Armory
Lake Wales, Florida
Wednesday, June 11, 1958.

Pursuant to notice, the above-entitled matter came on for hearing at 10 o'clock a.m.

BEFORE

GEORGE A. DOWNING, Esq., Trial Examiner.

APPEARANCES:

MRS. MARGARET L. FASSIG,
112 East Cass Street, Tampa 2, Florida, appearing on behalf of the General Counsel.

DAVID F. WINGATE,

Business Agent of Local 173, PO Box 548, Auburndale, Florida, appearing on behalf of the Charging Party.

O. R. T. BOWDEN, Esq.,

(Messrs. Hamilton & Bowden) 401 Smith Building, Jacksonville, Florida, appearing on behalf of Florida Citrus Canners Cooperative, the respondent.

* * * *

[4] PROCEEDINGS

[16] TRIAL EXAMINER:

I would like to hear from you in general as to the type of case you have and how you propose to develop it.

MRS. FASSIG:

All right. I will make this very brief, but simply give you a bird's-eye view of the case.

The Union was certified by the Board on February 6, 1957, following which there were negotiations conducted between the [17] Company and the Union. During the period following the Union's certification and up until September 1957, the Union's principal negotiator was a gentleman by the name of John Roberts, who is no longer with the Union but is now with one of the employers in this vicinity, with

a citrus company. He will not be one of the witnesses in this matter.

Mr. David Wingate, who is the Business Agent of the Union, succeeded Mr. Roberts as the Union's principal negotiator. The charge was —

TRIAL EXAMINER:
When did he get into the negotiations?

MRS. FASSIG:
He attended one bargaining meeting in June 1957, but actually took over as the Union's principal negotiator at the September 19th meeting at which time Mr. Bowden, who had been one of the principal negotiators, if not the principal negotiator, on behalf of the respondent, — Mr. Bowden and Mr. Stephenson were generally the company's representatives in the bargaining negotiations. At the September 19th meeting Mr. Bowden reviewed, at Mr. Wingate's request, the prior tentative agreements which had been reached during the period when Mr. Roberts had been the negotiator, and then from that time on Mr. Wingate conducted the negotiations.

I don't know to what extent you want me to review the actual negotiations, but it is the General Counsel's contention that there were bad faith, delays, and stalling on the part of the respondent, in an effort to avoid its obligation to bargain [18] in good faith with the Union in an attempt to arrive at a mutually agreeable contract.

At the September 19th meeting Mr. Bowden suggested that instead of continuing to negotiate from the Union's

original contract proposal and the company's original counter-proposal or its original proposal, with respect to which most of the negotiations had been conducted up to that time — that instead the Union take the old contract which had been in effect between the company and the old A F of L Union which the Teamsters had replaced as bargaining agent, — have the Teamsters take that A F of L contract and go through it or pick out which of those provisions were agreeable to the Teamsters, and indicate any changes which they desired; in other words, to draw up a new proposal based upon the old A F of L contract which the Union already had, and then during October I think there were about four meetings held, based upon the Union's second contract proposal, which as I say, was based upon the A F of L contract, indicating which provisions in the old contract they wanted and which ones they wanted some modification of.

Then at the end of the October negotiations the Union agreed to draw up a third proposal embodying all the agreements which had been reached between the parties during the October negotiations, which the Union did do, and submitted to the company, and at the next formal meeting held of the full [19] negotiating committees between the company and the Union full representatives, on December 18, 1957, the company at that time refused to bargain, advancing as its reason the freeze which had occurred in the meantime. I think you will take judicial notice of the fact that Florida did suffer severe freezes affecting the citrus crop during the past winter, and this December 18th meeting occurred after these freezes. That meeting will be gone into with testimony on that subject.

It is General Counsel's contention that at that meeting the company definitely refused to bargain, to negotiate with respect to the Union's third contract proposal, which it had prepared in an attempt to embody all prior agreements which had been reached between the parties, and in which the Union endeavored to meet objections previously made by the company to prior proposals which had been discussed but on which no agreement had actually been reached.

Following the December 18th meeting, at which the company had refused to negotiate because of the freeze, the company under date of January 4th mailed to the Union a wage proposal. It was not accompanied by any proposed contract, and Mr. Wingate telephoned Mr. Stephenson and questioned him, and established that no contract proposal went with the wage proposal. It was strictly a wage proposal only, no contract.

At this time you see, you are in January; the Union's [20] certification year would end February 6. So after Mr. Wingate reported that matter to the Union membership, the membership rejected the company's wage proposal, and testimony will establish that the membership was quite disturbed and upset because the wage proposal was not accompanied by any kind of a contract, after all these months of bargaining with the company and stalling.

So anyway, a strike then commenced. They notified the company under date of January 10 of the Union's rejection of the company's wage proposal, and waited a week, with no reply received from the company during that week following this letter of January 10th. The strike commenced on the morning of January 17th.

TRIAL EXAMINER:

Is it still in progress?

MRS. FASSIG:

The strike is still in progress. There will be evidence produced regarding the interrogation by some of the foremen prior to the strike, as to whether individual employees would participate in a strike if one were called. There was considerable rumor throughout the plant that there would be a strike. The Union had previously, at the November meeting, on November 14th, voted strike action if necessary in order to get an agreement from the company. They had voted that authority to their bargaining committee, and left it up to the bargaining committee whether or not there would actually be a strike. So there was rumor throughout the plant.

[21] TRIAL EXAMINER:

What is the General Counsel's theory or position with reference to what caused the strike?

MRS. FASSIG:

It is our theory that the strike was caused by the respondent's refusal to accompany its wage proposal with any kind of a contract proposal whatever, in spite of the fact that they had reached agreement during their prior negotiating sessions on many, many of the substantive provisions of a collective bargaining agreement.

TRIAL EXAMINER:

And its failure to do what you stated became in itself a refusal to bargain?

MRS. FASSIG:
Yes sir.

TRIAL EXAMINER:
And as I understand it your position is that the strike was caused only by a refusal to bargain.

MRS. FASSIG:
Yes sir.

• • • •

[22] MRS. FASSIG:
Then in addition to the various statements [23] by supervisors prior to the strike, after the commencement of the strike there were efforts by some representatives of the company, through the supervisory employees, to induce or to solicit some of the strikers to abandon the strike and return to work, which I think would definitely tend to prolong the strike rather than settle the issues arising or giving rise to the strike.

After the strike some of the employes who had been living in company-owned housing began receiving letters from the company seeking to have them vacate such company-owned housing. As I understand the company's answer, it admits that they have been trying to get these people to vacate the houses. The company merely is denying that such action was taken for a discriminatory purpose. Is that correct, Mr. Bowden?

MR. BOWDEN:
That is right.

MRS. FASSIG:

At this time I would like to make sure that I understand your answer, Mr. Bowden, and that may simplify my presentation of the case, with respect to the discharge of the strikers. Following the commencement of the strike, the company naturally began obtaining replacements of the strikers, and began issuing letters to the strikers notifying them that their jobs had been filled, they had been replaced, and that the employes were accordingly discharged. Most of them were named in an appendix to the original complaint, and then names of additional dischargees were obtained and added to the amend- [24] ment to the complaint; in fact, that was one of the reasons for amending the complaint, to include these additional ones. As I read the company's answer to the original complaint, I understood that you were denying the discharge of the strikers, but then as I read your answer to the amended complaint you admit the discharge of the strikers but deny the remainder of the allegations of the complaint, merely, in other words, to the effect that you have failed and refused to reinstate them.

MR. BOWDEN:

We will clear that up. We admit that the strikers were replaced by other employes, and so far as I know, except it might be for typographical purposes, all of them got such a letter as you mention.

TRIAL EXAMINER:

I assume your view is that this is an economic strike?

MR. BOWDEN:

Oh, yes.

TRIAL EXAMINER:

In which case, of course, the Respondent was entitled to do what it did.

• • • •

[35] TRIAL EXAMINER:

Now I would like to hear from you with reference to your own statement.

MR. BOWDEN:

All right, sir. When we address you do you want us to stand or may we sit?

TRIAL EXAMINER:

You may sit.

MR. BOWDEN:

All right. It is the company's position that we have had unions in this plant for many years. The company has lived with the unions and we have never had any labor unrest or any strike, etc.

The company went into this bargaining in good faith, and I think you will see from the sessions of the bargaining an honest effort was made by the company before the season started in an attempt to arrive at a contract.

TRIAL EXAMINER:

When did you first begin dealings with unions?

MR. BOWDEN:
I have the chronological date here, but back in 1946, I believe, was the first.

The first petition we got was on October 31, 1947. Since that time there has been yearly bargaining, and we had what we thought and believed to be a satisfactory understanding and agreement with the Citrus Workers union, which was an AF of [36] L union.

TRIAL EXAMINER:
Was there any break with reference to union representation between 1947 and the present union?

MR. BOWDEN:
No.

TRIAL EXAMINER:
The same union?

MR. BOWDEN:
They always had Citrus Workers.

TRIAL EXAMINER:
Yes.

MR. BOWDEN:
We started off bargaining with this union. We allege as one of our difficulties from our view point the fact that they had four different negotiators at times. We were moving along very satisfactorily and had agreed on the bulk of a contract with Mr. Roberts, when Mr. Wingate came on the scene and we started over from scratch. We will show you

that on some of the provisions that were agreed on by the union in June, they have disavowed those agreements and we have had as high as two different proposals on the same matter they had already agreed to in June, since that time.

We had the original proposal from the Teamsters in April; we had a company proposal to them in May; we had an additional proposal from the union on October 9th; we had an additional proposal from the union on November 23rd; we had a company offer to the union on January 4th. During that period of time we met. We will show you that we have come, that I have traveled from Jacksonville down here to meet with the union, and they have refused to meet. We will show you where the union has [37] taken recesses for conventions, etc., which accounts for a lot of delays, and I know of no case where it has been the company that has failed to show up at a scheduled meeting or refused to negotiate at that time.

TRIAL EXAMINER:

Who were the union negotiators other than Roberts and Wingate?

MR. BOWDEN:

We had Mr. Teague and Mr. Morgan.

TRIAL EXAMINER:

And I take it you and Mr. Stephenson represented the company?

MR. BOWDEN:

All the time, yes, sir, the complete time. We had at times

Mr. Walker here and others, but I mean we were present at all sessions. It is our position, of course, that the union, to enforce its economic position, called a strike which was supported by only some 20 per cent. of the workers.

TRIAL EXAMINER:

In that connection, what was the total number of employes in the plant?

MR. BOWDEN:

780, as I remember. In round figures, somewhere around 250 went out on strike; the balance of them worked. It is our position that that was an economic strike. Those people were replaced and discharged.

TRIAL EXAMINER:

It is your position that they were replaced and then discharged?

MR. BOWDEN:

That is true. That was the course; and that after the first of February we received a petition signed by [38] some 75 per cent of the employees, in which they advised us that they did not want the Union any longer to represent them. A year's certification at that time with the Union had expired, and we felt that we would then be in violation if we continued to meet with a representative who did not represent the majority of our employees.

We had made an offer of wages, and on this petition which they signed, which we will submit to you today under the terms of this agreement, we will show that they also wanted a wage increase that the company offered on Janu-

ary 4th, so at that time the wage increase which had been previously submitted to the Union was put into effect.

I think that is essentially the way we go in on this.

TRIAL EXAMINER:

I take it, then, that most of the 8(a)(3) is going to turn on the issue whether the strike was an economic strike or an unfair labor practice strike, and that is just about the only issue I have.

MR. BOWDEN:

That is right.

MRS. FASSIG:

That is right.

TRIAL EXAMINER:

In that connection. In other words, the 8(a)(5) issue is by far the main issue in the case, to determine the bulk of the charges.

MRS. FASSIG:

That is right.

MR. BOWDEN:

I think everything turns on that.

TRIAL EXAMINER:

Yes, except this independent 8(a)(1) that [39] is in here.

MR. BOWDEN:

Yes.

TRIAL EXAMINER:

I don't recall off-hand, I believe I have some recollection that the complaint also charges the circulation of that petition as 8(a)(1).

MRS. FASSIG:

Yes.

TRIAL EXAMINER:

Someway or other.

MRS. FASSIG:

It is also alleged under paragraph (f) under paragraph 8 of the complaint; that is, 8(f) alleges the sponsor-ship of and assistance in circulation of the petition.

* * * *

[40] M. A. STEPHENSON

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q (By Mrs. Fassig) Mr. Stephenson, will you state for the record your name and your position with the company?

A M. A. Stephenson, production manager, Florida Citrus Canners Cooperative.

Q And as Mr. Bowden stated during our preliminary discussion, [41] you have represented the company in all the negotiations with the Union, have you not?

A That is right, yes.

Q And do you have with you at this time the petitions to which you referred in your letter to the Union as the basis for your withdrawal of recognition of the Union?

A We have, yes. Here are the originals; we have a couple of sets of copies.

MR. BOWDEN:

We would like to withdraw the originals and put in the two sets of copies.

TRIAL EXAMINER:

Do you want to retain the originals?

MR. BOWDEN:

Yes, I would like to.

TRIAL EXAMINER:

You may produce the original, and have her check them, and then we can arrange for the substitution of the copies.

THE WITNESS:

These are the originals.

TRIAL EXAMINER:

If there are any seats I will have to ask the spectators to be seated.

Q (By Mrs. Fassig) Mr. Stephenson, can you tell us who prepared these petitions?

A Who prepared them?

Q Yes.

A I don't know.

Q You don't know. Was your permission asked re-

garding the circulation of them?

[42] A I was approached with the thought that the employees were considering the passing around of a petition; would there be any company rule prohibiting that? I replied that I didn't know of any company rule that would prohibit it, if it were handled in the same manner that such things normally were for contributions, collections and so on and so forth, for employees. We could have no part in it, of course, and it could not interfere with the regular work and duties of the employees.

Q Who was it who approached you regarding that?

A Who approached me?

Q Yes.

A Mr. Sherrer.

TRIAL EXAMINER:

Please spell that.

THE WITNESS:

S-h-e-r-r-e-r.

Q And who is Mr. Sherrer?

A Well, he is one of the workers in the plant. He was in the sectionizing plant at that time.

Q Do you know his first name?

A Raymond.

Q Raymond. Can you recall when it was that Mr. Sherrer approached you in this matter?

A I think I am correct; I believe it was the afternoon of the 16th of January, 1958. I think that is correct; I wouldn't be absolutely sure, but I believe that is right.

[43] Q You said there would be no objection to it? In substance that is what I understood you to say, if it con-

formed to the company rule. What is the usual company rule, with respect to circulating anything at the plant?

A Well, we have no particular rule, just a practice, I might say, but over the years, the employees have circulated various papers, pads and so on, oh, for weddings, funerals, or somebody's house burned down, and various things of that kind, and have done it themselves, just some employee or group of employees would take it around, and get various signatures on it.

TRIAL EXAMINER:

During working hours?

THE WITNESS:

Pardon me?

TRIAL EXAMINER:

During working hours?

THE WITNESS:

Yes, as long as they were not away from the job too long, or it didn't interfere with the work.

Q (By Mrs. Fassig) Mr. Stephenson, before anything, petition or anything of that sort can be circulated during working hours, is it necessary to get the approval of the management?

A It is not necessary, not formally so, no, but usually the practice has been that usually they do mention to the department or the foreman or me or somebody.

Q In past years has it been the practice for the company to permit the Union to solicit other employees for Union membership during working time?

[44] A No.

Q Do you know when the circulation of this petition actually commenced, then? Was it right after this Mr. Sherrer talked to you on the afternoon of January 16th?

A Well, it would be within, I would say, within the next week. I don't know the exact time.

Q During the following week?

A The following week or two weeks. As I recall it there was probably a two week period involved there.

Q Did you discuss with any of the other supervisory employees the matter of whether or not a petition would be circulated during working time, and let them know that it would be with your approval?

A I told them what conversation I had had with Mr. Sherrer, of Mr. Sherrer's request and what I had told him.

Q Did you convey to the other supervisory employees, then, that it would be permissible for this petition to be circulated during working time?

A In the same manner that any other similar thing had been handled before, yes.

Q I mean just tell us, what did you tell the other supervisors?

A Well, I'm not exactly sure just what I told them.

Q Well, the substance of what you told them regarding this petition?

[45] A The substance was just that. I don't think I covered everyone, but I know in two or three of the plants or departments with the other supervisors, I told them of this request that I had had, and of the conversation, so that they would be familiar with the situation.

Q Did Mr. Sherrer submit to you or discuss with you the proposed wording?

A He did not.

Q Did you at any time see any of the petitions before they were finally presented to you?

A I don't recall that I did, except I have some recollection that at one time, I saw, just in one instance, somebody with a pad in their hand in one of the plants, not as I remember actively passing it around at that time.

Q And when were the first petitions turned in to you?

A I can't tell you the exact date. They came in at two or three different times, I believe eight of them altogether, and they arrived in the office there over two or three different days.

Q Well, will you fix the approximate date of the receipt of the first one as definitely as you can, in relation to how soon it was after the strike commenced?

A I would say — I don't know, I checked them out with the payroll as of the 7th of February, to see they were all in by that time, and they had been — I don't know whether [46] it was all in that week, I believe the 7th was on a Friday as I remember, either in that week or in the week before.

Q You say they were all in by that week; you mean all eight of them had been turned in to you by that time?

A Yes.

TRIAL EXAMINER:

Do you recall who brought you the first one?

THE WITNESS:

Actually I didn't receive any of them directly. The first ones were turned in to some office down at the juice plant. My office was at the juice plant, and Mr. Cannon is in charge of the juice plant, and one afternoon after I had been away I came back to the plant and was talking to him, and he

said that several petitions had been given to him to be transferred to me, in my absence.

TRIAL EXAMINER:
Who is Mr. Cannon?

THE WITNESS:
He is superintendent of our juice plant. So I told him then to put them in the office and he did.

Q (By Mrs. Fassig) Then did some of the other supervisory employees turn in some of the other petitions?

A No.

Q Did Mr. Chellette turn in some to you?

A No.

Q Mr. Stephenson, can you recall other instances when any petitions concerning Union activities in anyway were previously circulated during working time?

[47] A No. There probably were, but not turned in to the company.

Q Not to your knowledge?

A Well, I think I have heard of some lists, probably of some activity of that kind around.

Q I mean where the company had given its approval to the circulation of any petition during the working time of the employees.

A I think we have had no request.

Q I ask whether or not the company had ever issued instructions to its foremen, its supervisory personnel, that workers were not to be allowed to interrupt their work to engage in any sort of union activities.

A Well, we had that under a contract for quite sometime; we had that agreement in the contract I believe for several years. Of course, that is not in the picture now. I

don't know that I quite understand you, but I don't think we have had any request from the Union for a circulation of anything like a petition or paper or anything of that nature. I don't recall any.

Q Do you recall whether or not the Union had ever requested or sought company approval of their being allowed to solicit employees for Union dues, check-off authorizations, during working time, or was that prohibited to be done during working time?

[48] A Well, I am not entirely clear on that. It seems to me at one time we had an agreement on that, that we would allow it, back a few years ago, as long as it didn't interfere with the orderly progress of the work.

Q I don't understand. What do you mean by as long as it wouldn't interfere with the orderly progress of the work? Would employees be allowed to stop work to talk about Union matters or to sign Union cards or any such thing as that? Would they be allowed to stop work for that, or would you consider that interferring with the work?

A I don't know that we ever stopped anyone from doing that. I don't know that it ever came to a point where a decision was necessary or rendered on that, but I believe in our contract, what I have in mind — and this is just from memory, but I have something in mind, back in some of our old labor contracts, that any collection of dues or so on on company time or premises will be handled in such a way as not to stop the orderly progress of the work on the job.

Q How do you interpret that? I mean, what do you mean by that, that it should not be done while the employee is actually working?

A Well, no, just as long as the job doesn't stop. He can't go off and leave his job or shut down his machine, or something like that.

Q Did any of the other supervisors question you as to the [49] extent to which they should permit the signing of these petitions during working time?

A No, not that I recall.

TRIAL EXAMINER:

Will you speak up louder, please?

THE WITNESS:

No, I don't recall that. I am sorry. To clarify that a little more, in our old contract here we had this clause, "The union agrees —"

Q (By Mrs. Fassig) Excuse me just a minute; will you identify the contract and the clause?

A It was the Citrus Workers, and I think the last contract we had with the labor union.

Q Which provision is that then, which article?

A Well, it says under union activity.

Q Does that article have a number?

A Article 2-C.

MRS. FASSIG:

Thank you.

THE WITNESS:

"The Union agrees that it will do no solicitation of membership or collection of dues from members which will in any way interfere with the production or proper operation of the plant."

* * * *

[54] J. E. HOLLY,
a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q (By Mrs. Fassig) Will you give your name to the Court Reporter, and your address, please, Mr. Holly.

A My name is J. E. Holly, and my present address is 141 West Crystal Avenue, Lake Wales.

Q Mr. Holly, have you been an employee of the Florida Citrus Canners Cooperative?

A Yes ma'am.

Q Can you tell us for approximately how many years?

A Approximately thirteen years.

Q And what was your position with the company?

A I was a warehouseman, working in the shipping department, shipping and storage department.

Q Have you been a member of the Teamsters Union at the plant prior to the strike?

A Yes ma'am.

Q And prior to being a member of the Teamsters Union had you been a member of any of the other Unions which had previously represented the employees of this company?

A Yes ma'am, I have been a member of the AF of L Industrial [55] Union, 24217, since 1948.

Q Since 19-what?

A 1948.

Q And have you ever held any positions in unions?

A I had been chief shop steward, and I had also served as representing the Union on arbitration boards.

Q Had you held any office in the Teamsters Union which was certified by the Board?

A No ma'am, I have not.

Q Mr. Holly, I will ask you whether or not you have ever had any conversations with Mr. Stephenson or with any of the other foremen regarding union matters in any way?

A Yes ma'am.

Q Can you tell us when your conversation was with Mr. Stephenson?

A My conversation with Mr. Stephenson was on Christmas Day, 1957.

Q And can you tell us where this conversation took place?

A This conversation took place in the hallway between the office of the assistant superintendent, I think his official — Mr. McCormick, and what is known as the stockroom, in that vicinity.

Q About what time of day was it; when was it?

A It was before noon and through noon or until an hour about the middle of the day.

[56] Q Was the plant working full production that day?

A The plant was out of operation that day.

Q And what were you doing that day?

A I was watchman.

Q Was anyone else present at the conversation between yourself and Mr. Stephenson?

A No one was.

Q All right. Now, will you relate for us as fully as you recall the conversation which took place on that occasion between yourself and Mr. Stephenson?

A Mr. Stephenson came down to his office that morning and went in, and I suppose worked a while. He came out, and we struck up a general conversation as to how bad the

freeze had been, and how much warmer the day was than it had been two weeks before. After that, well, Mr. Stephenson asked me what I felt was coming of the Union, and I replied that I was pretty much disgusted, I didn't know for sure what was going to happen, that there were rumors of a strike. And he told me that a strike would be foolish, that the season would be short because of the freeze, and that it didn't matter if we struck, the plant would shut down pretty soon; if it didn't shut down the strike would possibly put — a lot of good men would lose their jobs, and he told me that we should get together and kick the Teamsters organization out and we would all get along better, that there were certain benefits that were to be placed [57] on the bulletin board, advertised in the next few weeks which might give us an incentive to do so. He asked me why I didn't get together with a group of my friends and come to his office and tell him that we were dis-satisfied with negotiations as they were, and thought that we should have had a raise before, and that we thought that the Union was causing us not to get our raise, and from that we could start de-certification procedure. He stated that we would need legal counsel in such a matter, but that that could be arranged off-hand, off the record. He also told me that if we needed, thought we needed a Union, we could set up an independent union, and that they would assist us in doing so; that it was not necessary for us to be in a large International organization.

In the conversation Mr. Stephenson told me that if we didn't have the Union, that possibly, we would perhaps next season get our hospitalization free and perhaps a better policy; that they didn't intend to give us anything that the Teamsters might claim credit for as long as we kept them

in there. He also told me the rates of pay which would be posted, and said that they would be posted around the middle of January and they would be retro-active to, I believe, the 16th day of December.

That was the crux of my conversation with Mr. Stephenson. It was drawn out over a good long, much longer period of time than what it took me to tell it, with a lot of things about cold damage and the conditions in the plant, and things like that [58] thrown in.

Q Mr. Holly, do you recall whether he made any reference to the contract negotiations with the Teamsters?

A Mr. Stephenson said that they would have to meet perhaps another time or two with the Teamsters, but after February 6, which was our date when we could be de-certified, that that would be it; that they didn't intend to sign a contract with a bunch of gangsters and crooks, that we knew all the publicity they had been getting and the investigation that had been going on in Washington.

Q (By Trial Examiner) In referring to forming an independent union you said that he said "they would assist us."

A Yes sir.

Q Did he say who "they" were?

A No sir, but it could only have been management.

Q What did he say exactly?

A He said that if we needed to work, felt we needed a union, that we could set up an independent union, not affiliated with any International; that they would recognize us and help us set it up.

Q (By Mrs. Fassig) Have you related all that you can recall that was said in that conversation in relation to Union matters now?

A I think we discussed — I mean in the discussion about wages there was one particular category that we talked about, [59] that there had been some controversy over for some time, and Mr. Stephenson said at that time that he had begun to see that in our way, or I believe he said my way, and that he thought there should be a bigger differential in pay, and that it would come out that way on his statement of wages, straight statement of increase which was to be posted on the company board, on the bulletin board.

Q Do you recall what that job classification was?

A That was the classification of set-off stack man on the ends of lines 1 and 2, which were 46 ounce lines, a job that was very much more menial than any of the other jobs in the warehouse.

Q Do you know later whether or not the wage proposal, which was later posted, did give the raise he stated to you that day?

A Yes ma'am. Everything occurred just as he stated, except to the best of my knowledge he posted the proposal perhaps a week earlier than he had given me to understand that he would.

TRIAL EXAMINER:

And when was it retro-active to?

THE WITNESS:

I believe, sir, if my memory serves me correctly to December 16th. However, I could have forgotten.

Q (By Mrs. Fassig) Mr. Holly, did you ever have any further conversations with Mr. Stephenson regarding this matter?

A After that conversation I avoided Mr. Stephenson, and never again had any conversation with him, to my knowledge, until this day.

[60] TRIAL EXAMINER:
Did you go out on strike?

THE WITNESS:
I did.

Q (By Mrs. Fassig) Mr. Holly, you indicated you did have a conversation with another foreman.

A Yes.

Q Who was that?

A Shortly after that I had a conversation with the superintendent of the juice room or juicing department. I don't know his correct name, but his name to us is "Slick" Cannon.

Q And will you tell us about when this conversation took place?

A That conversation took place some, immediately I believe in the next day or maybe so, after the statement of increase of wages had been posted on the bulletin board, because we had discussed it, we discussed it a little bit in our conversation.

Q Now, was anyone else present during your conversation with Mr. Cannon?

A There were not.

Q At about what time of day was it, if you can recall?

A It was in the afternoon part of the day. We had a breakdown, and I went up towards the juice room, the fruit yards, to find out what was wrong, how much time I would have. It was a common practice, if we broke down, to see

how long a breakdown we were going to have, to give us smoking privileges and [61] things like that.

Q All right. Where did this conversation take place between you and Mr. Cannon?

A It took place walking between the fruit yard and the juice department. We were walking at the time.

Q All right. Now this is a conversation to do with union matters in some way?

A It was a conversation concerning the union, yes, ma'am.

Q All right. Will you relate that conversation now to the best you can now recall it?

A Slick and I were walking along, and we got into a discussion about what we felt was going to happen, and Slick said that we should go ahead and accept the wages or the proposal as offered by the company, and that we would be better off if we went ahead and kicked that bunch of gangsters and racketeers out; decertified, I presume to me that meant.

TRIAL EXAMINER:

What did he say?

THE WITNESS:

Well, I think, if I remember exactly, I probably couldn't quote him word for word, sir, but he said we would be better off if we would kick the Teamsters union out, that we hadn't had anything but trouble since they had been in, and if we would go along and follow Mr. Stephenson we would all get along a whole lot better.

* * * *

[65] CROSS EXAMINATION

Q (By Mr. Bowden) Mr. Holly, do you remember any other conversation that you might have had with Mr. Stephenson, other than the one you testified about?

A Covering how long a period of time?

Q I am speaking of the immediate area of the meeting you have testified about.

A I have had no conversation with him since that meeting.

[66] Q How about before?

A Well, there is a possibility that I have talked to Mr. Stephenson, meeting him, passing him by and speaking to him on various occasions, but none of any consequence.

Q Do you recall having a conversation with him during the month of December about your rates and what you would like to see proposed for your rates?

A I do not, other than the day of the discussion, Christmas Day.

Q I will ask you if sometime in November, the exact date being unknown at this time, you did not have a conversation with Mr. Stephenson in about the same place that you testified to about this December 25th meeting, just the two of you?

A Well, now, I remember meeting Mr. Stephenson in the same general area, coming down from the juice room one day. As to that conversation I wouldn't attempt to repeat, because it was only a passing meeting, it couldn't have involved over a minute or two. There was no standstill conversation, I would say, and we just went on by.

Q What did you say to him at that time?

A Well, I say I hesitate to say, because it was a very brief meeting, and I don't remember exactly what our discussion was as to that time.

* * * *

[68] Q (By Mr. Bowden) At that time did you have a conversation with Mr. Stephenson in reference to hardships connected with your particular job?

A I have on many occasions.

Q Well, did you at this time, Mr. Holly?

A Well, I doubt it because I didn't have the particular job [69] in question, I am satisfied that I didn't have the particular job in question at this time. I had a fairly light job, it was my first experience to have such a job to start the season with.

Q What was your exact job at that time?

A My job at that time was set off stackman on Line No. 5, I believe, in November.

Q Did you at that time advise Mr. Stephenson how arduous that work was, of stacking off with these 404 cans, or whatever it was?

A Well, Line No. 5 was a 24-2 can, that I have on many occasions — when I say many, on several different occasions, both in negotiations and at other times, discussed how hard setting off those 404 cans was.

Q Do you recall having such a conversation with Mr. Stephenson about your work in a conversation with him in November, about the same place you testified you spoke to him in December?

A I don't at this time. I don't remember, I couldn't nail it down to that particular time, no, but I know I have discussed it with him on several occasions.

Q Did you at that time tell Mr. Stephenson that you hoped that they would set a higher rate for that job than they would give as a general increase to all the employees there?

A I have often expressed that feeling.

Q Well, did you in November?

[70] A I would hesitate to nail it down that close, Mr. Bowden, because it has been a very frequent question about that 12-46 ounce line. It has been very arduous work.

Q You have no recollection, though, of a conversation in November about it?

A I wouldn't say whether I did it in July or in November, but I know I have done it on a great many occasions.

Q Do you remember whether you even had a meeting with him in November or not?

A I wouldn't say I had, but I would say I have passed Mr. Stephenson in the hallways and spoke with him when he would speak to me. I have also passed him many times whenever he didn't even seem to see me, but there have been times when he spoke to me, and whenever he did I would return —

Q Well, the discussion of your job, though, would be something more than passing the time of day, would it not, when you were discussing the rates of pay and the type of work you were doing?

A If it were a clear discussion of rates of pay, Mr. Bowden, I would think so; but to gripe about that line 1 and line 2 is something that might happen almost any time that you had a chance to talk to him.

• • • •

[73] Q In reference to this meeting that you testified about on December 25, do you recall how that conversation got started?

[74] A I believe, Mr. Bowden, that it started more or less upon the conversation about weather, and perhaps the amount of freeze damage, how cold it had been.

Q Was anything said at that time about the amount of work that would be available because of the freeze? Did you all discuss that?

A Yes sir.

Q What did you say about that?

A Well, Mr. Stephenson told me during the conversation that the season would be short.

Q Do you recall any conversation at that meeting about newspaper reports and articles about what was going on at the other citrus plants?

A It possibly was in the conversation.

Q Well, was it?

A I would hesitate to say for sure. I mean, I don't quite understand the gist of your question, Mr. Bowden.

Q Well, I will ask it this way then: Do you recall mentioning to Mr. Stephenson, asking him what they meant over at Stokely-Bordo in the decertification case that the employees had gotten over there? Do you remember talking to him about that and asking him about it?

A What they meant?

Q Yes.

A I don't know, Mr. Bowden. I believe I would understand [75] what they meant if it was in the paper. I don't know why I should have to ask anyone about it.

Q Did you ask him also about Snively and Pasco and other plants, about the employees and the newspaper reports about the Union activity going on at those plants?

A No.

Q Do you deny that you did that?

A I just am wondering what you are getting at. If I knew exactly what you were talking about I probably could give you an answer, because we haven't had any dealing since with Snively that I know of — I mean Pasco. I know that we possibly discussed the fact that the Teamsters had been decertified at Pasco; that is probably true.

TRIAL EXAMINER:

Mr. Witness, answer the questions as best you can, without worrying about what he is getting at.

THE WITNESS:

O.K., sir.

Q Have you ever worked at any other plant, Mr. Holly, where they had a union?

A I have not.

Q Did you tell Mr. Stephenson that day that you had?

A I have never told — I had no occasion to tell Mr. Stephenson. I have told Mr. Stephenson at different times that when I was employed with Florida Telephone Company a good many years ago, that we had a council there but we had no union at that time.

[76] Q Didn't you tell Mr. Stephenson at that time that that was a company union, and inquire from him what he thought about the prospects of getting one here?

A No sir, I did not.

Q You deny that you talked with him on that subject?

A I did not.

Q Did you ask Mr. Stephenson at that time, in view of your previous conversation that you had with him, had he made any decision about up-rating your job?

A I did not.

Q Did you have any conversation with him at that time at all about the rate for your job?

A This is Christmas Day? Correct, sir?

Q That is right.

A On Christmas Day Mr. Stephenson told me what the rates of pay would be.

Q What did he say your rate would be?

A My rate would have been four and a half cents, minimum rate, because I set off on a Gerber Baby Food line. However, he did tell me lines 1 and 2 would receive a greater rate of pay.

Q Did he tell you at that time that the company was preparing a proposal to the Union on rates?

A He told me at that time the company was preparing a proposal to the people on rates.

[77] Q Well, do you know from your own knowledge whether that proposal was made to the Union or to the people?

A The proposal, to my knowledge, as far as I know now, to be correct, was posted on the bulletin boards and mailed to the Union at the same time. Inasmuch as my information, inasfar as my information goes, I believe that is correct.

Q Well, now, were you working at that time?

A I was working.

Q When that proposal was made?

A I was working when the proposal was placed on the board.

Q Do you know whether that proposal was addressed to the Union or not?

A I would hesitate to say, Mr. Bowden. I don't remember reading the heading. I just read the proposal, or the rates.

Q You said also, or testified, that that was put on the Board the same day as it was presented to the Union.

A I said to the best of my knowledge. However, I am not a Union official, I don't know when they received it.

Q Well, you are guessing about it then?

A It is purely supposition. I think I have heard it stated.

Q Did you say on that meeting of December 25th Mr. Stephenson said he would never sign a contract with the Union?

A I did.

Q He said that?

A He said that they would never sign with the Teamsters [78] Union.

Q What gave rise to that conversation? What was the conversation immediately preceding that?

A I don't know if I can give the conversation as though it was written down, Mr. Bowden, but it all followed more or less in the general line, whenever we should de-certify, or we should accept the rate of pay incentive, I mean we should accept the rate of pay and go along, because the company did not intend to sign the contract with the Teamsters, they didn't have to.

Q They had not made any proposal of rates at that time, had they?

A No more than what he had told me they intended to make.

Q Did he sit down and go over all the rates that they intended to propose?

A Well, he went over the rates that would have applied to me, my department.

Q And did he get those out of his head, or did he read them off a paper?

A He got them out of his head.

Q What were some of the other rates on your department?

A Well, the two that really interested me most was the base rate of pay, which would have been four and a half cents increase, and that was also applicable. When he told me, he said four and a half cents or thereabouts, I remember offhand, not being a set off man and a loader mostly, that four and a half [79] cents on the base rate of pay also applied to the general classifications, with the exception of the set-off men on line 1 and line 2, and their rates would be approximately, or I guess it was ten cents.

Q And these he got out of his head, you say, without reference to any notes?

A I did say so, yes sir.

Q Did you at that time, in your conversation with Mr. Stephenson, express to him the fact that you were not happy with the way that Wingate and McLean had been conducting the negotiations?

A I did.

Q What did you say about that?

A Well, I said that I wasn't pleased. I said that I didn't think the negotiations were going like they should, I didn't think that Mack and David had handled them the way they should, had pushed them as well as they should.

Q Did you tell Mr. Stephenson at that time that they were not letting the people decide, that they were deciding themselves about what they would take and what they would not accept in the way of bargaining?

A No sir, I did not. That would be an error.

Q In other words, you don't believe that they should be submitted to the people to decide whether they wanted to take an offer or not?

[80] A In our local the people would have decided. Wingate and Mack or no one else couldn't have gotten by with it; it would have been impossible.

Q With reference to your conversation with Cannon, can you again tell me when that happened in point of days?

A No sir, I can't give you a date.

Q Or approximately when it was?

A I can give you a proximity, which you might could fix yourself; it happened immediately or shortly after the wage proposal had been posted.

Q Are you talking about the proposal of January 4th?

A That is right.

Q Would you say two or three days or a week or ten days after that?

A I would hate to be that explicit, Mr. Bowden. It happened while we were still talking about it among ourselves. It happened shortly thereafter.

Q It would not have been as much as two weeks after that, would it?

A No, I doubt it. It couldn't have been very well, because we were on strike.

Q Do you work for Mr. Cannon?

A I do not.

Q And what were the circumstances under which you were talking to him at this time?

[81] A I had been knowing Mr. Cannon for a great many years, of course, and when I went out on the fruit yard, if I remember exactly, it happened about three or four o'clock maybe in the afternoon, it was in the afternoon.

Q Is your job in the fruit yard?

A It is not.

Q What was the occasion of your being in the yard?

A We had a breakdown. We had a stoppage of work, and

I went out on the fruit yard, walking my line back from the cooler through the capper, to see what the hold-up was. It was common practice to do it, and then whenever we would definitely — I found out, I forget now exactly whether it was capping room trouble or whatever it was, but I found out we were going to be down for some time, so I went out on the fruit yard to see how much fruit we were going to have. Now we do it quite often, to try to determine how late we were going to work. And out there, when I started to return I met up with Mr. Cannon and we walked back together.

Q Walked back where?

A Walked back to his department, and I continued on to my department.

Q How far were you from his department at that time?

A Well, in the warehouse — and he, I guess, covers everything up to the warehouse — so actually when you come right down to it I suppose there is a wall between us.

[82] Q You are talking about walking with him. Was that a considerable distance or just a few paces? Just the distance from the fruit down to the juice room is how far. How far is that?

A I am not very good judging distances. It took us a few minutes, probably three or four minutes.

Q Would you say it is from here to the highway, which is probably a half mile?

A I would rather you wouldn't try to — I mean I can't judge distance. I would say it was equivalent to a city block.

Q About a city block?

A Yes.

Q That is close enough. And you all were talking all this time?

A We were talking a good part of the time.

Q All right, sir. What did you all talk about?

A We talked about working, and fruit.

Q What did you say about working, for instance? What was there about working?

A I think I asked him how late we were going to juice that night.

Q What did he say?

A Well, he probably told me — I don't know exactly how long he told me. He was either going to quit juicing at five or five-thirty, or something like that.

Q I mean, you are guessing again.

[83] A Yes, I am guessing as to how late we were going to work, because it varied. We didn't have regular hours.

Q What else did you talk about?

A We talked about the wage proposal, to the extent that Mr. Cannon asked me what I felt was fixing to happen, what I thought was going to happen.

Q What did you tell him?

A Well, if I remember correctly, I think I told him I didn't much believe anything was going to happen.

Q What did you say after that?

A After that he said that we had better go ahead and accept the proposal and kick the Union out; we would get along a whole lot better, everybody would be happier.

Q Mr. Cannon said that you would be better off to take the proposal?

A Yes sir.

Q To take the proposal I believe you said and kick the Union out?

A That is right.

Q What did you say to that?

A I probably agreed — I think, I didn't disagree with him.

TRIAL EXAMINER:

Did you agree with him?

THE WITNESS:

I was just trying to think whether I agreed with him or not. I wouldn't say that I did agree with him. I think that I turned the subject off.

[84] Q How did you turn it off? What did you talk about then in turning it off?

A I wouldn't say for sure what I did say to him. It was about the time to leave him, we had reached our point of separation. He went one way and I went the other.

Q Then according to your testimony, Cannon asked you what you thought would happen, and you told him, and he asked you or told you that you would be better off to take the proposal and kick the Union out.

TRIAL EXAMINER:

Answer, don't nod your head.

Q (continued) Is that right?

A Yes sir.

Q Do you remember any other conversation that took place at that time, other than those two statements?

A I believe that would be the crux of everything that we said. It probably was drawn out in a longer conversation, but I would hate to try to repeat word for word everything that was said.

Q Well, Mr. Holly, we would like for you, if you can to repeat word for word what was said, and we are not interested too much in the crux. What else was it that was said at that time?

TRIAL EXAMINER:

Speak for yourself, Mr. Bowden. I am interested in the crux, not in all the details, which seem to me to be largely immaterial.

[85] MR. BOWDEN:

I am interested in knowing what was talked about.

TRIAL EXAMINER:

Yes, whether it is material or not.

MR. BOWDEN:

I mean, I am interested in knowing what the entire conversation was.

TRIAL EXAMINER:

All right.

THE WITNESS:

Five minutes is a pretty good time, Mr. Bowden.

Q Well, would you say that you don't remember anything else that was said?

A I would say that I have covered the conversation very well, sir.

Q In those two statements. Did you go out on strike when the other employees went out?

A I did.

Q And have you been participating in the strike?

A I have.

Q Have you been replaced, discharged and replaced?

A I received a letter to that effect.

Q And you are interested in getting your job back, aren't you?

A I am on strike. I certainly am interested in getting my job back.

MR. BOWDEN:
Yes. That is all.

* * * *

[86] EVAN THOMAS NORRIS,
a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

TRIAL EXAMINER:
Give the reporter your name.

THE WITNESS:
Evan Thomas Norris.
Q (By Mrs. Fassig) State your address, Mr. Norris.
A Lake Wales, Florida, Route 1, Box 175.
Q Mr. Norris, how long had you worked for the Florida Citrus Canners Cooperative?
A Off and on, for about five years.

TRIAL EXAMINER:
Louder.
Q And in what department did you work?
A Warehouse.
Q And who was your foreman in the warehouse?
[87] A Robert Hall.
Q Robert Hall, H-a-l-l?
A That is right.

Q I will ask you whether or not you ever had any conversation with Mr. Robert Hall regarding either Union matters or Union strike?

A Yes ma'am, we did, repeatedly.

Q Can you recall about when the conversation took place?

A Well, my best knowledge, about the 15th.

TRIAL EXAMINER:

Of what?

Q Of what month?

A January.

Q This year?

A Yes ma'am.

Q And can you relate that to any other event that occurred about that time?

A Well, it was before — you know, a few days before we — you know, we started in, we just talked, bringing up the conversation about would I go out on a strike if they have one.

Q Can you recall how many days it was before the strike started that this conversation took place? The strike started on a Friday, January 17th.

A If I am not mistaken it started about Monday before Friday.

Q You mean the conversation took place on Monday?

A Yes ma'am, along there.

[88] Q All right. Now where were you at the time of the conversation?

A In the back of the warehouse, where you go into the sectionizing department.

Q Now was anybody else present during this conversation between you and Mr. Hall?

A No ma'am, we were always by ourselves.

Q Will you tell us what the conversation was?

A Yes ma'am. To my best knowledge, he asked me would I go out on a strike. I told him I didn't know. And he asked me when was the strike going to be, and I told him I didn't know. He asked me if we went out on a strike would I go, and I told him I didn't think so; and he said if we went out on a strike we would probably lose our jobs and he said he figured that it would be best if we would not go out on a strike.

Q Do you recall anything else that was said by Mr. Hall at that time with reference to your not going out on a strike?

A He said that we would get better pay. He asked me if we wanted better pay, and I told him I sure would.

Q Was anything else said in that connection? Just tell us as fully as you can what was said in that connection.

A Each and every other day he would come up and ask me whatever I heard about the strike, who would go out on a strike and so forth.

Q Had you been a member of the Union, or were you a member [89] of the Union at that time?

A No ma'am.

TRIAL EXAMINER:

Did you go out on strike?

THE WITNESS:

Yes sir.

Q Do you recall whether anything was said about any change in your rate of pay?

A He said that we would get a raise.

Q Under what condition, under what circumstances?

A Well, he said that the company had offered the Union a better raise — I mean, had already slashed it on the board, and he said that if we didn't have a union we would get better pay anyway.

* * * *

[98] CHARLEY WIDNER

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q (By Mrs. Fassig) Would you give your name and your address to the court reporter, please; and please speak up so we can all hear you.

A Charley Widner, 202 South Walker St., Lake Wales, Fla.

Q Mr. Widner, it is very important that we be able to understand what you are testifying, and it will be necessary for you to try to keep your voice up and not talk so fast but what the court reporter can hear you so he can record what you say.

Would you tell us when you went to work for the company: that is, the Florida Citrus Canners Cooperative?

A January 1, 1953.

Q And in what department did you work?

A In the juice room.

Q Who was your foreman on your shift?

A Clayton Durrance.

[99] Q Are you on the day shift or the night shift or do you alternate shifts? Will you explain that for us?

A Alternate shifts and change every four weeks.

Q Can you tell me who Mr. Victor Backus is? Did you know a Mr. Victor Backus?

A He was my superintendent.

Q I will ask whether or not you ever had a conversation with Mr. Victor Backus regarding Union or Union matters in any way?

A Yes ma'am.

Q Can you tell us about when that conversation took place?

A It was around the 10th, about a week before we came out on strike.

Q You refer to the 10th of January, 1958?

A 10th of January, 1958.

Q January this year; and do you remember where you were at the time of the conversation?

A We were in the restroom at the concentrate plant.

Q Was anyone else there with you at the same time you and Mr. Backus were there?

A No ma'am.

Q Will you relate for us the best you can recollect what the conversation was; who started it and what was said by each of you?

A Well, I can't remember just who started the conversation, but we were talking about the freeze and about the season, [100] what the prospect was for a good season; so I told him I believed we were going to have a good season in spite of the freeze, and he said, "Yes, I believe we will." I told him, I said, "The Union seems to be kind of slow

about doing anything about it," and he told me, he said, "If you all vote the Union out, like they did at Stokely-Bordo, the company will give you a raise," and, he said, everything will be all right.

Q Did you make any reply to that, Mr. Widner?

A No ma'am, I made no reply. I did not. I went on and left, I left him like that.

Q You mean you left the restroom, too?

A Yes ma'am, I left the restroom and went on back to work.

Q Did you have any other conversations beyond that with Mr. Backus, or at any time with Mr. Durrance regarding Union matters?

A Not at that time.

Q Well, at any time?

A Well, I have had conversations with Mr. Durrance about it.

Q All right, can you tell us when?

A No, I can't tell you when. Every now and then we would have a few words about it, but Mr. Durrance never would say nothing for or against. He just seemed to be neutral.

MRS. FASSIG:

All right, I have nothing further.

TRIAL EXAMINER:

Mr. Bowden?

MR. BOWDEN:

Yes sir.

[101] CROSS EXAMINATION

Q (By Mr. Bowden) This one conversation is all you had with Mr. Backus?

A This one conversation is all I had.

Q And you first mentioned the Union by saying the Union seems to be slow about doing anything for you.

A Yes.

Q And he answered that?

A He said if we would just vote the Union out, like they did at Stokely-Bordo.

Q You think this was around January 10?

A Around January 10.

Q Did you go out on strike, too?

A Yes sir.

* * * *

NELLIE B. WILKINSON,

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

[102] Q (By Trial Examiner) Speak up so everyone in the room can hear you. Will you give the reporter your name?

A My name is Nellie B. Wilkinson. I have been employed —

TRIAL EXAMINER:

Just a moment. Wait for the question, please ma'am. Mrs. Fassig will ask you the questions.

Q (By Mrs. Fassig) Mrs. Wilkinson, will you state your address, please?

A Lake Wales, Florida, Post Office Box 104.

Q Mrs. Wilkinson, you were employed by the Florida Citrus Canners Cooperative, were you?

A Yes ma'am.

Q How long have you worked for the company?

A Since 1931.

Q 1931?

A Every year; yes ma'am.

Q And was your husband also employed by the same company?

A Yes ma'am.

Q For how long?

A Well, I don't remember, but he has resigned for the last two years.

Q Retired?

A Yes, retired.

Q Mrs. Wilkinson, are you one of the strikers?

A Yes ma'am.

Q After you went out on strike have you received any message [103] from anyone from the company to return to work?

A Well, my husband received a call over the telephone from Mr. Ashley, for me to report for work at seven o'clock Monday morning.

Q Who is Mr. Ashley?

A He is our foreman, that is what I call; he doesn't hire or fire, he is just our room overseer.

Q In what department were you working?

A In the fruit yard.

Q Did you report for work, or did you call in, or what did you do?

A I called in.

Q To whom did you talk?

A I called Mr. Jones, he is the one who answered the phone.

Q What Mr. Jones is that?

A Mr. Jones wanted me to report for work, to go to work in the single juice room.

Q Who is this Mr. Jones? Give us his full name.

A Well, I think he is Mr. Harrison's assistant, as far as I know.

Q Do you know his first name or his initials?

A Elber Jones.

Q You say he is Mr. Harrison's assistant?

A He is assistant manager.

Q Assistant manager of what department now?

[104] A Of the fruit yard, what I call the production yard.

TRIAL EXAMINER:

Mrs. Fassig, be sure and find out the date on which this occurred.

Q Can you fix the date when this was that you called in to the company's office, pursuant to the message your husband gave you? How soon was it after the strike, or fix it the best you can.

A Well, it was on Saturday, Saturday afternoon.

Q The first Saturday after the strike started?

A After the strike started on the 17th.

Q (By Trial Examiner) The strike occurred on a Friday, didn't it?

A Yes, on a Friday.

Q Was it the next day?

A Yes.

Q (By Mrs. Fassig) Do you know about when it was that Mr. Ashley called and left the message with your husband?

A I don't know what time it was, for I wasn't there.

Q When was it you called the company's office?

A I called the next morning before worktime.

TRIAL EXAMINER:

You mean on Monday?

THE WITNESS:

On Monday, Monday morning.

Q You talked to this Mr. Jones?

A I did.

Q Now tell us what the conversation was between yourself [105] and Mr. Jones.

A Well, I asked Mr. Jones — Mr. Jones wanted me to come on to work, and go to work in the single strength room, to grade the fruit in the single juice room.

Q Is that where you regularly worked?

A No, I worked in the fruit yard, I graded oranges at the fruit yard; and I asked him where the graders were all at, and he said they were at the concentrate plant, some of them was, and some of them he didn't know where they were at. I said, "Mr. Jones, I'm sorry, but I belong to the Union, I have taken obligations and I have my conscience to live with, and I am afraid to take anybody else's job," and as soon as this was settled and was over with I was glad to come back to work, but if they wished to fire me in the meantime it was up to them.

Q Was anything else said then in the conversation?

A He was very nice.

Q What did he say?

A He didn't say anything; he just thanked me, and asked me how Dad was getting along — that is my husband, he called him Dad. I said he was getting along fine, and that is all he said.

MRS. FASSIG:

That is all.

CROSS EXAMINATION

Q (By Mr. Bowden) Mrs. Wilkinson, Mr. Jones never called you, did he?

[106] A I called him.

Q You called him?

A Yes.

Q This was on Monday?

A Yes, on Monday.

Q And did you call him in reference to going back to work?

A No.

Q Why did you call him?

A When I was notified to, — you see, my husband, Mr. Ashley called for me to report for work on Monday.

Q Who is Mr. Ashley?

A Well, he is a foreman, I understand, at the fruit yard.

Q Well, do you know or do you just understand what he is?

A Well, all I know he was just a foreman, that is all I know. I don't know whether he could hire or whether he could fire, or what he could do, but he has always been nice to me, just a foreman.

Q So based on information you got from your husband, you called Mr. Jones?

A The next morning I did.

Q You mean on Monday morning?

A On Monday morning.

Q And he told you that he had a job for you to work in the juice room?

A In the juice room, that is correct.

[107] Q And then you told him that you couldn't work under the circumstances?

A I told him I couldn't take anybody else's job, I'm sorry; I belong to the Union.

Q And he didn't argue with you about it, did he?

A He absolutely did not.

Q In fact, he was very courteous?

A He was very nice.

Q And that was the end of the conversation?

A That was the end of it.

Q Did anyone else talk to you about coming to work then?

A No sir, that was the end of it.

Q Did you work on Friday?

A Yes, I was there but I didn't work.

Q What do you mean by that?

A I was on the job, and I couldn't get off the job, for the yard was filled up full of trucks. My car was parked off in the fruit yard, and I couldn't get away from there.

Q You worked the first day of the strike, didn't you?

A No, I didn't work. There was no fruit run.

Q What did you do?

A I just sat there until the trucks began to thin out, and I could get out and go home.

Q What did the trucks standing there have to do — You mean you were physically in there where you couldn't get out?

[108] A I couldn't get out. There were too many trucks parked in the fruit yard, there was no way for me to get my car out. They were just jammed all over the place.

Q And you sat right there?

A I sat right there.

Q Did you get paid for that?

A I guess I did.

Q And all the time you were trying to get out?

A I was on the job at the orange place, at the grading table. Then we was called into the office, all of us graders were. Mr. Harrison wanted us to go over to the concentrate to grade.

Q This is on Friday, isn't it?

A That was on Friday, and I told him I couldn't go, that was the end of that, and then we were dismissed and we came home.

TRIAL EXAMINER:

I want to ask you a question.

THE WITNESS:

Yes, sir.

TRIAL EXAMINER:

When you called Mr. Jones on the telephone what did you say to him?

THE WITNESS:

Well, I don't remember just what it was. I said, "Mr. Jones," I said, "You asked me to call, to come to report for work." I said, "Is the strike settled?" He said, "No." He said, "We want you to come to work down there at the juice room on the grading."

TRIAL EXAMINER:

Anything further?

MR. BOWDEN:

No sir.

[109] REDIRECT EXAMINATION

Q (By Mrs. Fassig) When you talked to Mr. Jones did you make any reference to Mr. Ashley's message that had been left for you?

A No ma'am, I didn't.

Q You didn't mention Mr. Ashley. In the performance of your regular duties, were you working under Mr. Ashley's supervision?

A Yes.

Q Did he tell you what to do from time to time during the day?

A That is right.

TRIAL EXAMINER:

Why did you call Jones?

THE WITNESS:

Well, because he is the man that hires and fires, I guess. He is under Mr. Harrison, he is the assistant.

Q Is Mr. Ashley under Mr. Jones?

A Yes. Mr. Ashley is under Mr. Jones and Mr. Harrison, and Mr. Jones is the one who answered the telephone when I called.

TRIAL EXAMINER:

Anything further?

MRS. FASSIG:

No.

RECROSS EXAMINATION

Q (By Mr. Bowden) I would like to ask her this: Then on Friday, when you stayed at the plant all day, were you on strike or not?

A Yes sir.

[110] Q You got paid for that day's work?

A I did, but I went home as soon as I could get away from there, when I found out they were on strike. I didn't know they were going to strike, because I didn't go to the meeting.

TRIAL EXAMINER:

Well, you took the money for that day's pay?

THE WITNESS:

I did. They paid me.

MR. BOWDEN:

No further questions.

* * * *

ESTELLE McKINNEY,

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q (By Mrs. Fassig) Will you state your name for the court reporter, please?

A Estelle McKinney.

TRIAL EXAMINER:

Miss or Mrs.?

THE WITNESS:

Mrs.

Q Will you give us your address, please, Mrs. McKinney?

A 432 H Street, Lake Wales.

Q Mrs. McKinney, were you employed by the Florida Citrus Canners Cooperative?

[111] A Yes ma'am.

Q Are you one of the strikers?

A I am.

Q Was your husband employed by the company at the time of the strike?

A No.

Q Has he ever been employed by the company?

A Yes.

Q When?

A Well, it has been several years back, I don't recall just when, but it has been about four or five years back.

Q Since he has been employed by the company?

A Yes ma'am.

Q Mrs. McKinney, have you and your husband been living in a company owned house or apartment?

A Apartment.

Q In an apartment. And how long have you been living in that apartment?

A Well, I guess it has been about eleven years, I won't be exactly right on the time I moved there, but it has been somewhere around eleven years.

TRIAL EXAMINER:

Have you worked for the company that long?

THE WITNESS:

Ten years, the tenth season. This season made the tenth.

Q Did your husband work for the company before you did?

[112] A Yes ma'am.

Q And at the time you moved into the company owned apartment your husband was then employed by the company?

A He was, yes.

Q How long have you lived in this particular apartment that you are occupying now?

A This is the same one I moved in.

Q The same one?

A We have never moved out of it.

MRS. FASSIG:

All right. I have had marked for identification as General Counsel's exhibits 6-A and 6-B, the following documents: 6-A is a letter dated March 11, 1958, addressed to

Mr. Arthur McKinney from the company, signed by R. M. McCormick, rental division.

(Thereupon, the document above referred to was marked General Counsel's Exhibit 6-A for identification)

General Counsel's Exhibit 6-B is a letter dated April 8, 1958, addressed to Mr. Arthur McKinney, from the firm of Bradley & Johnson.

TRIAL EXAMINER:
A law firm?

MRS. FASSIG:
Yes, it is a law firm.

(Thereupon, the document above referred to was marked General Counsel's Exhibit 6-B for identification)

MRS. FASSIG:
By stipulation with Mr. Bowden I am offering both General Counsel's Exhibits 6-A and 6-B in evidence.

[113] MR. BOWDEN:
No objection.

TRIAL EXAMINER:
They will be received.

(T h e documents heretofore marked General Counsel's Exhibits 6-A and 6-B for identification were received in evidence)

TRIAL EXAMINER:
Off the record.

(Discussion off the record)

TRIAL EXAMINER:
On the record.

Q (By Mrs. Fassig) Mrs. McKinney, the letter which is dated March 11, 1958, addressed to your husband from Mr. McCormick, refers to a previous letter dated February 28, 1958. Do you now have that previous letter in your possession, or have you been able to find it?

A No, I don't have it, I haven't been able to find it.

Q You haven't been able to find it, it has become lost. Can you tell me whether or not you have ever had any conversations with Mr. McKinney pertaining to the matter of you and your husband vacating this company owned property?

A No, I haven't had any with him. The day I went to pay the rent when we came out on strike, I talked to him that day, but other than that I haven't talked to him, but he told me that day, I asked him —

Q Just a minute. The day you came out on strike you talked to him then?

A No ma'am, it was after we came out on strike.

Q About when was it you talked to him?

[114] TRIAL EXAMINER:

The next time the rent became due?

THE WITNESS:

Yes sir. It was about a week before it was due, somewhere's along there. I can't be exact about the date.

Q Generally, when was your rent due?

A On the 15th.

Q On the 15th of each month?

A That is right.

Q Was that then the 15th of February?

A That I was supposed to pay the rent, but it was a few days before the 15th, I know, because I always paid it ahead of time.

Q Where was it you had the conversation with Mr. McCormick then?

A In his office.

Q What happened that day?

A Well, he told me that he might not be able to accept anymore rent.

Q Did you pay your rent that was due at that time?

A I paid it, yes ma'am.

Q Just go ahead and tell us the conversation that took place on that occasion.

A I asked him why was that. He said he didn't know, he was just doing his job. I said, "I guess if I wasn't out on strike it would be different." He said, "I am quite sure it would." And that was all the conversation we had.

[115] Q Have you had any further conversations since then with him?

A No ma'am.

Q You paid the rent in person that day. Since that time —

A I mailed it in.

Q You have mailed it in each time?

A That is right.

Q Since the receipt of this letter from the law firm, delivering to you formal notice regarding your tenancy at that address have there been any further proceedings? In other words, have you been notified of any further legal action taken by the company?

A Since that letter?

Q Yes.

A No ma'am.

Q (By Trial Examiner) Are you still in the property?

A Yes, sir.

Q You haven't paid anymore rent?

A They won't accept it, and I haven't mailed anymore in since they refused it.

Q (By Mrs. Fassig) When was the time that the company refused to accept your rent?

A Don't you have it on there, the last one I have there? I don't recall. This past month I haven't sent it in. My lawyer told me not to mail it in any longer.

Q In other words, this letter of April 8, which returned a [116] postal money order — you haven't sent anymore in since this letter of April 8 returning the rent money?

A That is right.

Q Has there been any court hearing in connection with your occupancy of that apartment?

A No.

Q No further action?

A No.

* * * *

[121] MYRA PAULINE CONNELLY,
a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q (By Mrs. Fassig) Mrs. Connelly, we have been having a little trouble in not being able to hear the witnesses, so I would like to ask you to please speak as loud as you can, so at least the court reporter can hear you.

Mrs. Connelly, will you state your full name for the court reporter? Give him your name.

A Myra Pauline Connelly.

Q Mrs. Connelly, what is your address?

A 335 Briggs Avenue, Lake Wales.

A Mrs. Connelly, have you worked for the Florida Citrus Canners Cooperative for several seasons?

A Yes, since I was approximately fourteen years old.

Q It is not continuous employment, is it; just during the high production season?

A That is right.

[122] Q And did you go to work this last season at the beginning of the season, or when did you start to work?

A The 21st day of January.

Q This year?

A 1958.

Q And in what department do you work, or did you work this past season?

A I was employed in the frozen concentrate.

Q What were your duties in that department; what did you do?

A Grader.

Q A grader. And on whose shift did you work, who was your foreman?

A Clayton Durrance.

Q Mrs. Connelly, will you tell us the circumstances regarding, or what action you took with reference to the circulation of a petition among the employees there, after you started working for the company in January, 1958? When did you circulate it, at whose request, and just simply tell us what all you did in connection with it.

A Well, we will take the first part. I carried the petition around, but for the specific date I don't remember, as at that time I didn't think it was important.

TRIAL EXAMINER:

How long after you started to work?

THE WITNESS:

I would say approximately three weeks; and [123] no one asked me in particular to carry it around, no foreman or no boss or anything like that. I just merely stated that I would carry the petition around, if I could get my hands on it, and I guess word just went from one to the other, and then some man that I don't know and I haven't seen him since, I didn't ask him his name, told me where I could pick it up, and that was in the capping room, and that is where I picked it up.

Q You picked it up, or it was given to you by someone?

A I asked Mr. Fewox to pass it to me.

TRIAL EXAMINER:

That is a new name, Fewox.

THE WITNESS:
That is right.

TRIAL EXAMINER:
Spell it, please.

MRS. FASSIG:
F-e-w-o-x.

Q And what position did Mr. Fewox hold at that time?

A He is a foreman in the capping room.

Q Foreman of the capping room?

A And he passed it to me because I asked him to, and that is the only connection he had with it.

Q Normally you would not be going into the capping room?

A No, I am not in the habit of going in the capping room.

Q Now then, how much time — Was this on more than one day that you circulated this petition?

A No.

Q On just one day?

A Just one day.

[124] Q And how much time would you say you spent that day taking the petition around and getting signatures to it?

A Well, I haven't added it all up, but I didn't inconvenience my job in any way.

Q Well, just give me your estimate of how much time you think you spent doing that that day.

A Well, I would say about an hour and a half that morning, or during the day, and one hour that evening.

Q In other words, you stayed over on the next shift, and you got signatures from people on the next shift?

A I did.

TRIAL EXAMINER:

Were you working on that shift?

THE WITNESS:

No, I was not.

Q Did you clock out after you finished getting signatures on the evening shift?

A I did. I clocked out at seven o'clock that night.

Q So that you were paid for the time you were getting the signatures for the petition?

A Yes, I was.

TRIAL EXAMINER:

You mean the first hour and a half?

THE WITNESS:

No.

TRIAL EXAMINER:

What about the hour in the afternoon, or the evening?

MRS. FASSIG:

That is what I am asking.

Q You said you stayed on the next shift and got signatures, [125] too. Were you paid for the time you stayed and circulated the petition on the next shift?

A Well, not to the company. I didn't ask any questions, and they didn't tell me I couldn't. I only asked permission to carry it around.

Q No, you are not answering my question, Mrs. Connelly. I'm sorry, I didn't make it clear. You said you carried it around, you estimated, about an hour and a half on your own shift.

A That is right.

Q And then you stayed and circulated it among the employes on the next shift?

A For about an hour.

Q On the evening shift, for about an hour; and do I understand you clocked out after you had circulated it on the evening shift for an hour?

A That is right.

Q So you were paid for the time you were circulating it on the evening shift?

A Yes.

Q You were not doing any production work on that second shift?

A No.

TRIAL EXAMINER:

Who was the foreman on that second shift?

THE WITNESS:

Mr. Jones.

Q Is that Walter E. Jones?

A I don't know his first name. All I know is Mr. Jones.

[126] Q All right. During the time you were circulating it on your own shift under Mr. Durrance as your foreman, did you have any conversation with Mr. Durrance regarding the circulation of the petition?

A None.

Q Did he ask you what you were doing?

A No, he didn't ask me.

Q He didn't ask you about it?

A No.

Q Did you have any conversation with Mr. Chelette regarding the petition?

A After I had carried it around I could see that Mr. Durrance didn't like the idea of my being off the belt, and so I seen him come from downstairs, he came back upstairs as I was going downstairs. I saw Mr. Chelette on the bottom floor and I asked him if Mr. Durrance was provoked with me in any way for carrying it around. He said that Mr. Durrance did ask him what I was doing, and he told Mr. Durrance that I had his permission to carry that around, as I had come to Mr. Chelette and asked for permission and he had granted me permission, and that is all there was to it.

TRIAL EXAMINER:

Well, had Chelette granted you permission?

THE WITNESS:

He certainly had.

* * * *

[128] Q (By Mrs. Fassig) After you clocked out what did you do with the petition that evening? Did you take it home?

A I did not.

Q What did you do with the petition?

A I carried it in and laid it on Mr. Challette's desk.

Q And left it there?

A I didn't know what to do with it. I hadn't seen anyone to ask, so I left it on his desk and closed the door.

MRS. FASSIG:
All right.

TRIAL EXAMINER:
Was Jones present on the second shift?

[129] THE WITNESS:
If he was I didn't see him. He was there but I didn't see him.

Q (By Mrs. Fassig) Did you take it into some of the other departments, either on the evening shift or during your regular day shift?

A Yes, I went downstairs in the other departments, but the foremen, I don't know them.

Q During both your regular shift and the evening shift, I mean, during both periods, did you go to other departments with the petition?

A Yes.

Q Did you speak to the foremen of those other departments to ask them if it was all right for you to contact their employees about signing the petition?

A I didn't, because I had Mr. Challette's permission, and I thought that was all I needed.

Q Can you give me Mr. Challette's title, what he is?

A I don't really know.

MRS. FASSIG:
Mr. Bowden, could we have that by stipulation?

MR. BOWDEN:
He is concentrate superintendent.

MRS. FASSIG:
Thank you.

TRIAL EXAMINER:
The stipulation is received.

Q I think you said that was the only time that you did take a petition around to get signatures to it?

[130] A That is right.

Q (By Trial Examiner) Do you remember how many names you got?

A Well, I tried to estimate it, and approximately forty in the day and about ten that evening.

* * * *

CROSS EXAMINATION

[131] Q (By Mr. Bowden) Mrs. Connelly, did Mr. Chelette ask you to take this petition around?

A No, sir, he did not.

* * * *

Q Did you ask permission from Mr. Chelette to stay on the clock when you stayed there on the night shift?

A I did not.

Q Did he know or intend or understand that you were on the clock?

A Not to my knowledge he didn't know.

Q Did you ever have any discussions with him about that at all?

[132] A I have not.

Q Now in reference to Mr. Fewox, you said he passed the papers to you. What do you mean by that? Did he have it?

A He didn't have it personally, no. It was in the capping room, and I didn't go in there because, for one reason it is flooded, and for another reason there was nothing but men, and I am not in the habit of going in those places, so he passed it to me.

Q Did you see it somewhere?

A No.

Q Did you see the petition?

A This fellow that I don't even know and haven't seen him since, told me I could pick it up in the capping room, and I didn't know where in the capping room, so I asked Mr. Fewox if he had seen it laying around, and he said it was over there on his tool chest, and I asked him if he would pass it to me and he did, and that is the only time he had it in his hands.

Q (By Trial Examiner) At the time you got it there were no names on it?

A No names.

Q You were the first to sign?

A That is right.

* * * *

[133] Q Did you go back, or did you ever see the petitions again after you put them on Mr. Challette's desk?

A I never saw them again, I never saw one.

* * * *

[134] CLAYTON DURRANCE,
a witness called by and on behalf of the General Counsel, after being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q (By Mrs. Fassig) Mr. Durrance, will you state your name for the court reporter, please?

A Clayton Durrance.

Q Will you give us your address, please?

A Frostproof, Route 1.

Q Mr. Durrance, for how many years have you been employed by the Florida Citrus Canners Cooperative?

A I believe it has been seven. It is either six or seven; I believe it is seven.

Q And what is your position with that company?

A Juice room foreman, concentrate plant.

Q And are you working at the present time?

A No ma'am.

Q For what reason?

A I had an injury the first of April, and I have not been [135] able to go back.

Q You are not in condition yet to be able to return to work, is that it?

A That is right, yes ma'am.

Q All right. Mr. Durrance, directing your attention back to the period immediately following or sometime after the beginning of the strike, which commenced January 17, 1958, I will ask if you recall the circulation of a petition, an anti-union petition, among the employees in your department? Do you recall when that was circulated?

MR. BOWDEN:

Your Honor, I am going to object to her description of it. I don't know whether it is anti-union or not; it is just a petition.

TRIAL EXAMINER:

I sustain the objection to the characterization.

MRS. FASSIG:

All right, I will rephrase that.

Q Do you recall the circulation of a petition in your department by a Mrs. Myra Connelly?

A I do, yes ma'am.

Q Will you tell us what all you recall in connection with the circulation of that petition in your department; how much time she spent doing it?

A Well, I would say that it was about an hour that morning, or maybe a little more; at least an hour.

Q On a morning?

[136] A Yes ma'am.

Q And among what employees was she circulating or taking it?

A All of them.

Q How many employees in your department?

A There were about sixteen at that time, I believe.

Q And were they working at the time?

A Yes ma'am, they were supposed to be.

Q What kind of work do the employees in your department do?

A Some of them work on the machines, and the women grade.

Q And in order to read the petition and sign it would

it be necessary for the employees to stop their duties they were performing at the time?

A Yes ma'am, for the time being.

Q Did you say anything about the matter of her circulating the petition during the working day, to either Mrs. Connelly or to one of the higher management people?

A Well, Mr. R. D. Challette came up, and I told him one of the graders was taking right smart of time circulating this petition and he says, "Well, I gave her permission to." I said, "Well, I'm sorry, I didn't know." Nobody hadn't told me nothing about that. He said "she had permission from me to carry that petition around."

Q Was anything said to you about her staying over beyond her regular shift to circulate it on the evening shift?

A Well, she told me she was going to stay over and carry it [137] around.

Q She told you that she was going to do that?

A Yes ma'am.

Q Did she say that she had permission to do that?

A Yes ma'am.

Q What did she say in that connection?

A Well, she said they wanted her to stay and carry it around that night.

Q Did she say who wanted her to stay and carry it around?

A I don't know that she said right then who wanted her. She said they wanted her to stay and carry it around that night, so they could get it ready to get off.

Q Did you have any further conversation with her the next day as to how long she had stayed the night before, or did you talk to Mrs. Connelly anymore about it?

A No. She told me she stayed an hour.

Q When was this, the next day she told you that?

A Yes ma'am.

Q (By Trial Examiner) Did you have any discussion with her as to whether she should check out at the end of her shift?

A No sir, I did not. You mean did I have a discussion with her?

Q With her.

A Before she checked out? I don't remember it.

Q Did you have any discussion with her about whether she [138] should check out?

A No sir.

Q (By Mrs. Fassig) Just what was the conversation about her staying over? Just tell us how the conversation went, if you can recall.

A She said they wanted her to stay over and carry that petition around, so they could get it ready and get it off. She said they wanted it to the Labor Board, if I understood right, by the 6th, and they had to get all the signatures on it.

TRIAL EXAMINER:

Did she say who "they" were?

THE WITNESS:

Well, no sir, she didn't.

Q You didn't ask her who they were?

A No sir, because she told me she had permission to carry it, and I figured that was sufficient.

TRIAL EXAMINER:

And you knew who the permission came from?

THE WITNESS:

Yes sir.

Q Did you discuss the matter of the circulation of this petition with any of the other foremen?

A No ma'am, I did not.

Q With the foreman on the other shift in your department?

A I did with Mr. Jones. When he came in I told Mr. Jones that they had carried the petition around that morning, and that it seemed they were not too well satisfied with me saying [139] something about it, so Mr. R. D. told me that he had given permission to carry it around, so I told Mr. Jones that I had to get in a jam that morning saying something to him about this petition; and he said, "Well, Mr. Chelette called me in as I came by the office, and told me they would be around with it tonight, and I am glad he did, so it would save me having to say something to them."

Q Mr. Durrance, was there a practice or custom with respect to circulating petitions or obtaining authorizations or union signatures during working time?

A No, ma'am.

Q Had you ever received any instructions from management regarding the employes engaging in any union activities?

A Yes, ma'am.

Q In general what were your instructions in that regard?

A Well, they didn't want them to take up their time during working time.

Q They shouldn't take up time?

A Yes, ma'am.

Q In what, in union activities in any way?

A Yes, ma'am.

Q (By Trial Examiner) What about collections for flowers, and things of that kind? Were there any rules on that?

A No, sir.

Q Anybody could do it?

[140] A Anybody, yes, sir. They just appointed somebody to take it up for them.

Q Did they have to get permission from anyone or not?

A Well, along at the last we got permission from Mr. Chelette when we took up for flowers or collection for anybody that had had a disaster; he gave us permission, and then we sent one around.

Q And collections of that sort were taken up during working time, weren't they?

A Yes, sir.

Q (By Mrs. Fassig) During your conversation with Mr. Chelette regarding Mrs. Connelly's circulation of this petition, was anything said by you with reference to whether or not it was taking her off her job?

A Yes, ma'am.

Q What was said in that connection?

A Well, I just told him she was off of her job, and I didn't know anything about it, there hadn't been anything said to me about it at all. I figured he ought to know it. He said, "Well, she had permission."

Q Was it necessary for you to obtain any replacement for her on her job during the time she was passing this petition?

A Well, I did that; I put somebody in her place.

TRIAL EXAMINER:

I understood you to say also that you have got by. Did you say that?

[141] THE WITNESS:

Well, by letting her replace her.

TRIAL EXAMINER:

Did you say that?

THE WITNESS:

Yes.

Q Will you explain what you mean by how you could have gotten by without having replaced her?

A Well, we could have just filled up her place like I did.

TRIAL EXAMINER:

By putting someone else on?

THE WITNESS:

Yes, sir.

Q Did the obtaining of signatures from the other employees in your department slow them down at all in the performance of their regular work duties?

A Ma'am?

MRS. FASSIG:

Will you read the question?

(Question read)

A Yes sir, to a certain extent it did.

MRS. FASSIG:
That is all.

TRIAL EXAMINER:
Mr. Bowden?

CROSS EXAMINATION

Q (By Mr. Bowden) Mr. Durrance, so that the Trial Examiner will understand your situation, does your wife work at the plant?

A Yes sir.

Q Did she go out on strike?

A Yes sir.

Q Was she discharged?

[142] A Yes, sir.

Q Is that right?

A Yes, sir.

Q All right. Now I believe you said that toward the end there, meaning I assume towards the end — What end were you referring to when you said toward the end you got permission from R. D. Chelette to pass the petitions or take up collections?

A Well, Mr. Chelette wanted that the boys should get permission from him when petitions were passed around. They used to have a lot of petitions; anybody would go in there, as a matter of fact, to take up a petition.

TRIAL EXAMINER:
You will have to speak louder and more distinctly. The Court Reporter has got to get all this down. Go ahead.

A (Continued) And we got permission from Mr. Chelette.

Q When did this new rule go into effect?

A Well, we had been doing that for some time.

Q Well, would you say that was six months or a year?

A I would say so.

Q So it was not at all unusual for Mr. Chelette to give someone permission to go around and circulate a petition or take up a collection in the plant, was it?

A No, sir.

Q And the fact that when you asked Mrs. Connelly who gave her [143] permission and she told you it was Mr. Chelette, that was the way it was supposed to have been, wasn't it?

A Well, I didn't ask Mrs. Connelly who gave her permission. She said Mr. Chelette gave her permission.

Q That is the way it should have been, is it not?

A That is right.

Q How long would it take an employe to take this petition and sign it? You said it slowed up their work. How much did it slow it up?

A Well, as far as the petition, it was not slowed up. We kept on running.

Q Well, then, this didn't interfere with your production at all, did it?

A Not in a way, no, sir.

Q And when Mr. Chelette told Mr. Jones, I believe his name is, on the night shift, that he had given her permission, that again was the way the policy had been that he gave permission, was it not?

A That is right.

Q Was there anything unusual about that at all, his telling Mr. Jones that?

A No, sir.

Q Isn't it quite normal and a very common thing for people to be taking up collections or passing petitions or something around in the concentrate plant?

[144] A Well, it hadn't been. If there was anything, as I said a while ago, if you had a disaster, or somebody died or something, they would take up money for flowers.

Q Have they started such a move for you since you got hurt, that you know of?

A No, no.

Q Are you positive of that?

A Starting something for me, taking up something for me? No sir.

Q Do you know whether that is true or not?

A No, I don't know it.

Q Well, did you object so much, Mr. Durrance, to this petition when it was not uncommon for someone to be taking petitions around?

A Well, I didn't object to it. The only thing I objected to was my employees just knocking off and going ahead and taking their time, and not saying anything to me about it. I figured it was my place to know what the employees were doing.

Q So you checked up and found out, didn't you?

A Mr. Challette came up, and I asked him about it.

Q Were you satisfied then with his explanation?

A I certainly was.

Q And as far as you were concerned, her taking the petition around was no further concern of yours?

A In a way.

[145] Q Did you not give her permission to stay on the clock that night?

A No sir.

Q Do you know whether she stayed on the clock?

A No sir.

Q Do you know whether Mr. Jones authorized her to stay on the clock?

A No sir.

Q That is all you know about it, just what you have told us?

A That is all I know.

MR. BOWDEN:

No further questions.

TRIAL EXAMINER:

Mrs. Fassig?

MRS. FASSIG:

Nothing further.

Q (By Trial Examiner) Mr. Durrance, I suppose that you saw Mrs. Connelly circulating this petition, didn't you?

A Yes sir.

Q And did you notice whether any of the employees spent any time in reading it, or whether they simply signed their names as she shoved it at them?

A No sir, they read it.

Q And did you notice whether, before they read it, she talked to them at all?

A Yes, they all talked together.

* * * *

[146] ALICE LASSETER,

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q (By Mrs. Fassig) Mrs. Lasseter, will you state your name for the court reporter, and spell your last name for him, please.

A Alice Lasseter, L-a-s-s-e-t-e-r.

Q Mrs. Lasseter, will you give him your address, too?

A Route 2, Box 197-A, Lake Wales.

Q Mrs. Lasseter, are you one of the striking employees?

A Yes, I am.

Q Now before the strike commenced, before you came out on strike — first I will ask when did you first take part in the strike? The strike commenced on Friday, January 17. Were you out that day?

A No, I came out Monday morning on the 20th.

Q Well now, on Friday — What department did you work in?

A In the juice testing department.

Q And who is your immediate foreman?

A Gray Nolin.

Q Who is over Mr. Nolin in supervision?

A C. B. Cannon.

[147] Q Sometimes referred to as Slick Cannon?

A Yes, Slick Cannon.

Q I will ask whether or not you have had any conversations with either Mr. Cannon or Mr. Nolin with respect to the Union, union matters in any way, or with respect to the strike?

A Well, they talked to us on the morning the strike started.

Q Now who did, who talked to you?

A Gray talked to us mostly.

Q Gray Nolin?

A Slick had a little to say.

Q Tell us who the "us" is, who all do you refer to that Gray was talking to?

A Well, the ones that worked in the juice room.

• • • •

[148] Q What was it Mr. Nolin said on that occasion?

A Well, he said that if we wanted to do work we would have to work any place they put us in the plant or go over to the juice concentrate plant, the frozen concentrate plant; we would have full police protection, and we would keep our seniority rights; if we would stay and work we would keep our seniority rights, and — let me think. And we would have a job just as long as Florida Citrus Canners had any work for us to do at all, we would keep a job, and he said the ones that did go out would lose their compensation and their Blue Cross, and they [149] wouldn't have a job. That was just it, they would be out of a job if they went out.

Q All right. Was there anything else?

A Well, that was about it. There was a lot of talk, everyone talking. Well, if there was trouble, they kept saying we would have police protection, and all the things we would gain by staying, and the things we would lose, including our job, if we went out.

Q Were there any other conversations between you yourself and Mr. Cannon — I mean Gray Nolin that day?

A Well, no, not between us.

Q Was there any conversation in which Mr. Cannon made any statements regarding the strike?

A Well, he stood up there and let Gray do most of the talking, and he sort of seconded the motion every once in a while, you know, he would agree with what Gray said was present.

Q He was present during the time Mr. Gray talked to you?

A Yes, he was present when Gray talked, and they went over to frozen and back to us, and before we clocked out he made a long speech; I can't remember half the things he said, but most of the same things he said that morning.

TRIAL EXAMINER:

Who talked that night?

THE WITNESS:

Gray.

TRIAL EXAMINER:

Was Cannon there?

THE WITNESS:

Cannon was standing by; and one thing Gray [150] did say that night at the clock, that it was time we stood on our own feet instead of letting someone stand on them for us.

Q (By Mrs. Fassig) Did Mr. Cannon add any remarks to the remarks made by Gray Nolin at that time?

A I don't think so, not at that time, but Nevil — a man, Mr. Ernest Simmons, talked to him that Saturday afternoon; we all talked in the factory.

Q The next day?

A Yes, Saturday afternoon. We worked at our own place most of Saturday, we were all talking around about,

well, we had relatives out, and our friends wouldn't speak to us, and how would they know they could come back to work another year if we didn't have, you know, some sort of contract? And he agreed that all that was really bad, to be out with your friends and all that. So then he said, "But now this is confidential. Mr. Stephenson said that the ones that did not come back by Monday wouldn't have a job, the old hands." He said that the company lawyer had just come from a strike in Cocoa, and that the Union didn't have a leg to stand on. That is just what he told us.

Q Was Ernest Simmons an employee in the department?

A No, he wasn't an employee, he was just there because his wife worked there.

Q Was this at the quitting time?

A It was near quitting time.

[151] Q Does he generally come to pick her up when she gets off from work?

A Yes.

Q This was Saturday afternoon, about time for you to get off from work?

A Yes. Slick also said that Holly Hill, and he named two more plants but I can't remember the plants, but he said that Holly Hill and two more had called in and pledged their workers to come in and help run the plant, and regardless if everyone of us went out the plant would run.

Q What is this Holly Hill? Is that the name of another citrus plant?

A It is the name of another place, I think up around Davenport or something like that.

Q Was this Slick Cannon who was talking to you on this Saturday afternoon?

A Yes.

Q There about closing time?

A Yes.

Q Does the quitting time vary from day to day?

A Yes, it does.

Q Depending upon the amount of production?

A Yes.

Q The following Monday did you work, on the Monday after the strike started?

[152] A No.

Q What did you do that day?

A J. D. and Nevil stopped by the house, and we had agreed that if one of us —

Q You say J. D. Nevil?

A J. D. and Nevil.

TRIAL EXAMINER:

Who is J. D.?

THE WITNESS:

J. D. McLeod and Nevil, they were two of the boys I work with, they stopped by the house on Monday morning and said they were going out, but they were going down and tell Gray and Slick; and so I said, Well, I would go down with them and we would all tell them, because we had agreed that if one in our group went out we all would go out, Ruth and Robert and the three of us. Ruthie Hartsfield would never go out.

So we went down to tell him, and we tried to tell him why we were going out, and I will admit I told him I was scared to death to, because you never knew what would happen in a strike, and I had my kids to think of and all,

so I told Gray, "I just love my job, and I hate to give it up, and I want to come back when the strike is over." And he yelled at me, and he says, "The minute you go out of here and I can get somebody to put in your place, you haven't got a job."

Q Was there anything else said on that Monday then, before you actually left the plant?

A No, we went out.

[153] Q You left then?

A Yes.

MRS. FASSIG:

That is all.

THE WITNESS:

We did get our letters.

TRIAL EXAMINER:

Just a moment, that is all. Counsel will be able to question you now.

• • • •

[159] AIMIE SMITH,

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q (By Mrs. Fassig) Will you state your name for the reporter, please?

A Aimie Smith.

Q Is it Mrs. Smith?

A Yes.

Q And your address, Mrs. Smith?

A Lake Wales, Route 2, Box 196.

[161] Q Mrs. Smith, are you one of the striking employees of the Florida Citrus Canners Cooperative?

A Yes ma'am.

Q And did you go out on the strike when it commenced on January 17th this year?

A Yes ma'am.

Q All right. After the strike started did you have any conversation with Mrs. Marshall, a forelady by the name of Mrs. Marshall, regarding getting your check?

A Yes ma'am.

Q When was it you talked to Mrs. Marshall?

A It was on — well, it was the week of the strike. They struck on the 16th, and that was Monday, I believe it was Monday or Tuesday, so it was the next Thursday morning, that is when it was.

Q What is your regular payday, when do you generally get paid?

A On Thursday.

Q On Thursday?

A Yes ma'am.

Q And the strike started on the 17th of January, on a Friday. Then when would you be paid for the work you had performed during the week of the strike, the week before the strike?

A The next Thursday after the strike.

[161] Q The following Thursday?

A Yes ma'am.

Q What were the circumstances of your talk with Mrs.

Marshall that day? Did you go out to the plant and see her, or call her, or what did you do?

A No ma'am, I called her.

Q Tell us what the conversation was between yourself and Mrs. Marshall.

A I called her and asked her if she would send the check to me by Mrs. Branch, the woman I was riding with.

Q Is that B-r-a-n-c-h?

A Yes.

Q Was Mrs. Branch working then at the time?

A Yes ma'am.

Q And you had been accustomed to riding back and forth to work with her?

A Yes.

Q Go ahead, relate to us the rest of the conversation.

A I asked her if she would send my check to me, and she said, "No, definitely not." And I asked her why and she said, well, I would have to come to the plant to get the check. I asked her how would I get it, and she said, "Come to the office and get it." And I told her I couldn't, because I wouldn't cross the picket line. And she asked why I didn't want to cross the picket line, and I said I just wouldn't cross it [162] because I thought more of myself and of my friends that were out, local friends that were out, to cross the picket line. Then she asked me — then I told her when this was all settled, then I would come back to work.

Q When you first told her you didn't want to cross the picket line was anything said about your coming back to work at that time?

A Yes ma'am. She asked me why didn't I come on back to work? She said, "Come on back Monday and go to work." And I told her I quit and I didn't want to cross

the picket line, and she asked me why I didn't want to cross the picket line, there were some that were crossing the picket line; and I told her I just didn't want to, I just couldn't cross it.

Q When in relation to that conversation with Mrs. Marshall, then, did you get your discharge letter, if you recall?

A The 3rd day of February.

• • • •

[163] LEONARD GRAY,

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q (By Mrs. Fassig) Will you state your name?

A Leonard Gray.

Q Is that Gray, G-r-a-y?

A That is right.

Q And your address, Mr. Gray?

A 822 Henry Street, Lake Wales.

Q Mr. Gray, are you an employee of the Florida Citrus Canners Cooperative?

[164] A Yes ma'am.

Q And what department did you work in?

A The juicing department.

Q And who was head of that department?

A Slick Cannon, I reckon would be the one.

Q And who was your immediate foreman or supervisor?

A Findlay Arthur.

Q (By Trial Examiner) Who?

A Findlay Arthur.

Q What is the last name?

A Arthur.

Q A-r-t-h-u-r?

A I believe that is the way to spell it.

Q (By Mrs. Fassig) Was that on the day shift that you were working?

A Yes ma'am.

Q Do you know who the foreman was on the night shift in the juice room?

A That was Jack — oh, I can't think of it.

Q Jack Miller?

A Jack Miller, yes, ma'am.

Q I will ask you whether or not you ever had any conversation with any of those foremen regarding the Union, Union matters or the strike?

A Well, we had discussed it along, but nothing —

[165] Q Who is "we"? Who do you mean by "we," which one of the foremen?

A Well, I have discussed it with Jack.

Q With Jack Miller?

A Miller, yes.

Q Do you recall any particular conversation you had with Mr. Miller before the strike started?

A No, I don't recall none.

Q Directing your attention to an occasion about a week before the strike started —

A Yes, ma'am.

Q — do you recall a conversation which occurred at that

time regarding the strike, whether or not there would be a strike, or anything about that?

A Well, he said —

TRIAL EXAMINER:

Who said?

THE WITNESS:

Jack Miller. He said if, asked me — he came up and asked me was I going out on strike, and I said, "Yes, I am going out on strike if they call one."

TRIAL EXAMINER:

He said or you said?

THE WITNESS:

I said. He just wanted to know if I was going out on strike, and I said if they called a strike I was going out on it. He said, "If you go out on a strike, you know you would be hard-timed and probably fired;" I could be fired for going out.

[166] Q Do you know what he meant by the term hard-timed?

A I don't really know.

Q Are those the words he used?

A Yes ma'am, those were the words he used.

Q What does that mean?

A Ma'am?

Q What does that mean?

A I reckon you could be pushed around, making it so hard you would want to quit or something. That is all I know.

Q Was anyone else present during this conversation, at the time Mr. Miller and you were talking?

A Yes ma'am.

Q Who else was there?

A J. B. Batson and Leo Brown, and a boy by the name of Dick, I can't think of his last name.

Q Do you know whether or not he talked to the others, or did you overhear any conversation between him and the other boys?

A Well, he did ask J. B. Batson would he go out if they called a strike, and J. B. said, "You're god damned right I would go out."

Q Have you told us all the conversation regarding that matter that you can recall?

A Yes ma'am.

MRS. FASSIG:

That is all.

* * * *

[173] GEORGE N. JACKSON,

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q (By Mrs. Fassig) Will you state your name for the reporter?

A George N. Jackson; George Nevils Jackson.

Q And your address, Mr. Jackson?

A Route 2, Box 114, Lake Wales.

Q Mr. Jackson, what department did you work in at the Florida Citrus Canners Cooperative?

A I worked in the juicing department, on the blending tanks.

Q And who was your immediate foreman?

A Gray Nolin, and Slick Cannon was over him.

Q Directing your attention to the day that the strike commenced at the plant, on January 17, 1958, did you work that day?

A Yes ma'am.

Q Did you have any conversation with Mr. Gray Nolin or Mr. Slick Cannon during that time, at any time; were any remarks made by either one concerning the strike or concerning Union matters?

A Yes ma'am, we did.

Q Well, what did Mr. Nolin have to say, and if so when?

A Well, would you like me to begin at the beginning and go all the way through it?

Q That perhaps would be better, if you will do that, please, [174] on this Friday that the strike started.

A Yes ma'am. Well, I went in that morning at five-thirty to set up the tanks and get the things ready for the juice, and we got to juicing and several began to come in and say that they have struck, and we went ahead and juiced for about approximately an hour, an hour and a half, I guess, and Mr. Nolin came in and told me, he said, "Blow off the fruit, the peeling is being tore up, and we are going to have to shut down for a while," which I did, and we got up there and picked up the peelings, and about the time we got the peelings picked up he came in and asked us all, told us that we probably would not have enough help to run the plant; to go over to the concentrate,

all of us, and run it. So I asked him that I would rather not go over there to the concentrate, I would rather stay there, which some of them did go over there and go to work, but I didn't, and there was another boy that stayed with me.

Q Who was that?

A That was J. D. McLeod, which we went ahead and capped up what juice we had in the tanks here, what few was left there, and some more was left in the warehouse and on the capping machines, and after that we cleaned up everything; but in the meantime, well, we were talking about it, off and on, when we got a little spare time, and he talked to us, he told us that he had all the names of the boys that didn't come in there that morning on a piece of paper down in Mr. Cannon's office, and [175] he would hate to put our names on it; and he also said that those boys would not be back. He said, "I would hate to put you boys' names on that paper." So I didn't know the situation, I hadn't been attending the Union meetings and I didn't know anything about what they were striking for at the time, but that night I talked to some of my friends, but I went back in and worked the following Saturday. We went back in that Saturday. Of course, we talked about strikes and all that was going on practically all day.

Q You mean among the employees?

A Yes ma'am; me and J. D. and Mr. Nolin also, and Mr. Cannon also, we all talked about it, and right at the present time I don't remember exactly what all was said.

Q Do you remember a talk with Mr. Nolin or the remarks made by Mr. Nolin to a group of you, a group of employees? That was on Friday.

A Yes ma'am. He talked to us up there in the sugar room some, and also down at the clock on Friday morning,

and he told us that it was time for us to stand on our own two feet if we were ever going to do anything, and told us as far as the Union was concerned he didn't think we had no Union.

Q Did he explain or elaborate on why he made that remark?

A No ma'am, I don't believe he did, not at that time. The following Saturday Mr. Cannon was talking to myself and Mrs. Lasseter, and he said, he told us that the company lawyer had [176] just come from Cocoa, and said that he won a labor dispute up there and had lost the union, and this union didn't have a foot to stand on.

Q The union had lost in the strike at Cocoa?

A Yes, ma'am.

Q During the time you were working, on either Friday or Saturday, did any of the foremen ask that you request other strikers to return to work?

A Well, I had a brother-in-law out on strike.

Q What is his name?

A Johnson Byrd; and I told Mr. Nolin that it was in the family, and I hated him to be out and me in there paying for him.

Q What was the beginning of that conversation; how did you happen to be saying anything to Mr. Nolin about your brother-in-law? What started that?

A Well, we were standing in the back of the sugar room, and my brother-in-law came in and we seen him out there at the little store across the street, and he told me, asked me —

Q Who; Gray Nolin?

A Yes. He asked me was my brother-in-law out, and I told him he was. And I told him then that it was hard for me to stay in there and he be out and so on; so he told

me, he said, "Well, I don't see how in the world they can win." He said, "I hate to see the boy lose his job, too." So I went, he let me off, and [177] I went and talked to my brother-in-law that Saturday morning.

Q Well, was that your idea or was that at the request of Mr. Nolin?

A Well, I told him that I would love to talk to him, and he told me, "Well, why don't you just take off a few minutes and go over there and talk to him?"

Q Later did Mr. Nolin ask you for any report on what your brother-in-law was going to do, or what the conversation had been?

A Yes ma'am. When I got back from there he asked me how did my brother-in-law talk, and I told him that he talked like he knowed what he was doing, and was going to stay out.

Q Now then, on the following Monday, the Monday following the commencement of the strike, did you go to work that day?

A Yes ma'am, I went in. The work was to start juicing at nine o'clock. I went in close to nine o'clock, but I didn't clock in, and at that time I had decided that I was going to come out on strike.

Q Did you talk to your foreman, Mr. Nolin?

A Yes ma'am.

Q What did you tell your foreman?

A Well, I met him back there in the sugar room, and I told him the way I seen things, I talked to a bunch of my friends, and that I couldn't stay in there and work any longer.

TRIAL EXAMINER:

Who was your foreman then?

[178] THE WITNESS:

Nolin, Gray Nolin.

Q What did Gray Nolin say?

A So he told me, he said, "Well, if that is the way you feel about it," he said, "all right." He said, "You know what it means." He said, "When you go out." I said, "No, I don't believe I do exactly, know what it means. I guess it means that I am going out on strike." And he said, "Well, if you go out it is just like you are quitting, so you won't have no job here."

Q Was that the end of the conversation?

A Yes ma'am. I turned and walked off, and there was another lady, Mrs. Lasseter and J. D. McLeod, that went in with me, and I turned and walked out and left them talking to Mr. Nolin.

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[188] THOMAS C. BARNHILL,

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q (By Mrs. Fassig) Will you state your name, please?

A Thomas Clarence Barnhill.

Q Will you spell that last name?

A B-a-r-n-h-i-l-l.

Q And will you give us your address, please?

A 403 North Wetmore Street, Lake Wales.

Q Mr. Barnhill, are you an employee of the Florida Citrus Canners Cooperative?

A Yes ma'am.

Q And in what department are you employed?

A Capping room.

• • • •

Q On what shift were you working at the time the petition was passed around among the employees? I am referring to the petition that was passed around sometime after this strike [189] started.

A The night shift.

Q And did you have anything to do with the circulation of that petition?

A Yes ma'am, I did.

Q Do you recall when it was?

A I don't remember what night it was, but I think I carried it up in the juice room, and two or three of them signed. I won't say how many. And then I brought it back down and laid it on the table down in front of the capping room.

Q And did you circulate it among the other employees in your own department?

A They all looked at it on the breaks in the capping room.

Q And how many employees were in the capping room?

A Four.

Q Just the four of you?

A Yes, besides the foreman.

Q Was the petition circulated in your department again after that by anyone else?

A Yes ma'am.

Q By whom?

A This lady back here, I don't know what her name is.

MRS. FASSIG:
Will Mrs. Connelly please stand?

TRIAL EXAMINER:
Will you stand, please, and tell us your name?

[190] WOMAN STANDING:
Myra Pauline Connelly.

Q (By Mrs. Fassig) And was anyone else with Mrs. Connelly?

A Mr. Dick Fewox's wife.

Q Will you describe just what the circumstances were while Mrs. Connelly took the petition in your own department? Did she obtain signatures from employees in your department?

A Yes ma'am, they signed.

Q I will ask you whether or not it was necessary for the employees to stop work, those who did sign it, while they stopped to read it.

A Some of them did, yes.

Q During the time that you circulated the petition, I think you said in the juice room —

A That is right.

Q — did any of the employees stop work in order to read it or to sign it?

A Yes ma'am, they had to stop to read it.

* * * *

[192] J. F. TADLOCK,
a witness called by and on behalf of the General Counsel, being [193] first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q (By Mrs. Fassig) Will you state your name, please?

A J. F. Tadlock.

Q And will you give us your address, Mr. Tadlock?

A Route 2, Box 90, Lake Wales.

Q Mr. Tadlock, how long have you been employed by the Florida Citrus Canners Cooperative?

A Around 15 years.

Q And will you state your present age?

A Sixty.

Q Mr. Tadlock, what is your job with the company, what position do you hold?

A Fireman.

Q Fireman. How many firemen does the company employ?

A Five.

Q There are five firemen. Are you one of the striking employees of the company?

A I am.

Q Did you engage in the strike from the very beginning of it?

A Yes ma'am.

Q Did you work on Friday, the 17th of January, at all?

A No, Thursday was the last day I worked.

Q Mr. Tadlock, who is your foreman?

[194] A Mr. Rexford, R. L. Rexford.

TRIAL EXAMINER:

R-e-x-f-o-r-d?

THE WITNESS:

That is right.

Q What all group of employees is Mr. Rexford foreman over?

A Well, he is over the maintenance department.

Q Over all of the department?

A Well, that is the juice department at the old plant, and the boilers.

Q You said boilers?

A Yes ma'am.

Q I will ask whether Mr. Rexford is in any way related to Mr. Stephenson?

A Yes ma'am, Mr. Stephenson is his son-in-law.

Q Mr. Tadlock, I ask whether or not at any time after the strike commenced you have been requested by any representative of the company to abandon the strike and return to work?

A Yes ma'am.

Q Will you tell us the circumstances, when it occurred?

A Well, I can't say whether it was Friday or Saturday, it was one of those days; Mr. Rexford came —

Q When in relation to the time the strike started?

A I beg your pardon?

Q When in relation to the time the strike started?

TRIAL EXAMINER:

How long after the strike started?

THE WITNESS:

Well, it was on Friday or Saturday after the [195] strike, the day it started or the next day. I couldn't say which one of those it is, I couldn't be positive.

Q (By Mrs. Fassig) Where were you at the time?

A I was with the picket out on the east gate, No. 1 gate.

Q All right. About what time of the day or evening was it that this incident occurred?

A It was, the best I remember, around dark; but the hour, I couldn't say what the hour was, but it was late in the afternoon.

Q All right. What occurred?

A Mr. Rexford came out and he stopped, and he said, "John, I am surprised at you." He said, "Why don't you quit and come on back in and go to work?" I says, "Well, Mr. Rexford, I told you I belong to the union, and I have only one face and I wear that seven days a week, and the majority of the people come out," and I says, "I can't cross that picket line and go back in under the conditions I came out under." I says, "I just can't go back under those conditions." And he says, "Well," he says, "stay on this damned picket line," and off he went.

Q Was he in his automobile or was he on foot?

A No, he was in his car.

Q Have you had any further conversations with him since then?

A No, not since. Well, yes, I have. I have talked to him since, but —

Q But on any matter pertaining to the strike or union matters?

[196] A No.

* * * *

[199] MRS. J. F. TADLOCK,

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q (By Mrs. Fassig) Will you state your name, please?

A Mrs. J. F. Tadlock.

Q Are you the wife of Mr. Tadlock, who was the witness who was just on the stand?

A That is right.

Q Mrs. Tadlock, I ask you whether or not you have ever had any [200] conversation with Mr. Rexford, your husband's foreman, since the strike started?

A I have.

Q Can you tell us where the conversation took place?

A In my home, in the living room.

Q And when was it?

A It was on Sunday after the strike.

Q All right. Was anyone else home, present during this conversation?

A No.

Q What time of the day was it?

A Well, it was between eleven and twelve o'clock.

Q Can you fix it anymore definitely?

A I would say about, maybe a quarter after eleven.

Q All right. Will you just describe for us what occurred that morning?

A Well, Mr. Rexford came there to the door, and I invited him in, and he asked me, he said, "Where is John?" I said, "He is up at church." He said, "Well, good." He said he wanted to talk to me anyway, that John was a hothead and he couldn't talk to him.

Q Go ahead.

A And I told him, "All right, just go ahead." He said, "Well," he said that the strikers couldn't win, and that the company fixed it before the strike so that it was impossible

[201] for them to win; and he said that he wanted — that John was old and he wanted to take care of John, see that he worked until he was 65 so he could retire. Of course, we talked more, but it wasn't too much about the strike.

Q Well, go on, recall as much as you can, any other things that were said relating to the strike or your husband's work.

A Well, he just talked about that he wanted John to come on back and go to work, so that he could work until he was old enough to retire. He said he could come back and take it like he did, as it come.

Q As it come?

A Yes ma'am.

Q How long would you estimate that this conversation lasted? How long was he there?

A Well, he left before my husband came back from church, and he had been back about twelve o'clock and he was already gone. I don't think he could have stayed there over twenty-five or thirty minutes, something like that. I didn't keep up with the actual time.

TRIAL EXAMINER:

Did he give you any message for your husband?

THE WITNESS:

No sir, only just to tell him to come back. He said he couldn't do nothing with him, he just wanted me to see if I could get him to come back and go to work.

Q (By Mrs. Fassig) I will ask whether or not he asked you [202] to tell your husband concerning the conversation he had had with you.

A Yes ma'am. He says, "You tell John what I said, and see if he will come back." He said, "Will you do that?" I

told him, "Yes sir, I will tell him." He said that John was so old he couldn't go out and get a job and work, and he ought to consider that. I told him, well, he did; he did consider all of that. Then I went on to say, "We will get by some way or another," and he says, "Well, that is what I always told my wife when she worried, that we would be able to get by."

* * * *

[208] ARTHUR J. SANDERS,
a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q (By Mrs. Fassig) Will you state your name, please?
A Arthur J. Sanders.
Q Your address, Mr. Sanders?
A 237 South 3rd Street.
Q Is that Lake Wales?
A Yes ma'am.
Q Mr. Sanders, how long have you been working for the Florida Citrus Canners Cooperative?
[209] A Since January, 1952.
Q And in what department are you employed?
A In the loading crew of the concentrate.
Q In the loading crew. Is that in the shipping department?
A Yes ma'am.
Q And who is head of that department?
A Mr. Claude Scroggins.

TRIAL EXAMINER:
Spell the last name.

THE WITNESS:
S-c-r-o-g-g-i-n-s.

Q And he is the head of the department on the day shift, is that it?

A Yes ma'am.

Q Would he also be the head over the night shift? Is he the head of the whole department, both the day and night foremen under him?

A Just the day.

Q And who is in charge at night?

A Mr. Buck Vaughan.

Q Mr. Sanders, are you one of the striking employees of the company?

A Yes ma'am.

Q Have you been out on strike since it commenced?

A Yes ma'am.

Q How about the Friday that the strike started; did you go to work that day?

[210] A No ma'am.

Q I ask whether or not you have been contacted by any of the foremen or supervisory personnel regarding work since the strike started?

A Yes ma'am.

Q By whom?

A Mr. Claude Scroggins.

Q Will you tell us when he contacted you, and how?

A It was around ten o'clock of the morning he called me and told me —

Q Of what morning?

A Friday, the day of the strike. He called me and told

me that he had been notified to tell me that if I wanted my damned job I had better come on back.

Q What did you say? Did you make any reply?

A I told him I would be back when the rest of them came back.

Q Was there any other conversation between you and Mr. Scroggins regarding the same matter?

A Not at that time. Later on in the day he called me up and told me that if I wasn't there by six o'clock the next morning they were pulling my card.

Q Was anything else said?

A No, that is all.

* * * *

[214] ALICE ZORN,

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q (By Mrs. Fassig) Will you state your name, please?

A Alice Zorn.

Q And will you give us your address, Mrs. Zorn?

A 422 H Street.

Q In Lake Wales?

A Lake Wales, yes.

Q Are you an employee of the Florida Citrus Canners Cooperative?

A Yes ma'am.

Q And how long have you been employed by that company?

A Ever since 1945.

Q In what department did you work?

A I used to grade and I shoot cans.

Q In what department would you say that is?

A I shoot cans, it is in the juicing department.

Q In the juicing department; and who is your foreman in that [215] department?

A Jerry Sikes.

TRIAL EXAMINER:

How do you spell the last name?

THE WITNESS:

Sikes? S-i-k-e-s.

Q And who is the head one over that entire department, the whole juice department; is that Mr. Cannon?

A C. B. Cannon.

Q Does your husband work for the company?

A Yes, he does.

Q And in what department does he work?

A In the warehouse.

Q And do you have any other relatives working for the company?

A My son.

Q What is his name?

A William H. Zorn.

* * * *

[216] Q Now since the commencement of the strike have any of the foremen contacted you or had anything to say to you regarding returning to work?

A Yes, they did.
Q Who was that?
A Jerry Sikes.
Q And where did this take place?
A At my house.
Q When?
A On the 17th of January.
Q On the day the strike started?
A That is right.
[217] Q On that Friday?
A Yes ma'am.
Q At about what time of day was it?
A It was between five and six o'clock.

TRIAL EXAMINER:
In the afternoon?

THE WITNESS:
Yes sir.
Q Was anyone else present at the time?
A Not at the time he asked me to go back to work.
Q Well, just tell us in your own words, now, what occurred at that time, that afternoon.
A Well, he came up and he blew his horn, and I went to see who it was, and he said, "Alice, I would like to talk to you a few minutes," and I went out to see him. He says, "Do you want your job?" I says, "Yes, I do." He said, "You better go back to it." I said, "Do you mean the company and the Union has settled the strike already?" And he says, "It makes no difference whether it is settled or not, if you want to work you better get back." He says, "If you don't you are going to be replaced." And he told me, he says, "If you want to work, be down there on Saturday." The next day

was Saturday. He said, "Be down there at seven o'clock." I says, "I will make up my mind," and I went back to the house.

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[221] JAMES H. HALL,

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q (By Mrs. Fassig) Will you state your name, please?

A James H. Hall.

Q And your address, Mr. Hall?

A 426 H Street.

Q Lake Wales, Florida.

A Yes ma'am

Q Mr. Hall, how long have you been an employee of the Florida Citrus Canners Cooperative?

A Ten years.

Q And during that period have you lived in any company owned housing?

[222] A Yes ma'am.

Q How long have you lived in this company housing?

A It has been three years.

Q And is this the only company house you ever occupied?

A Yes ma'am.

Q Is it a house or an apartment?

A An apartment.

Q It is an apartment?

A Yes ma'am.

Q At the time you rented the apartment was anything said to you as to whether or not it is necessary for you to be an employee of the company in order to live in a company owned apartment?

A No ma'am.

Q Is your wife also an employee of the company?

A Yes ma'am.

Q Are both of you strikers?

A Yes ma'am.

Q Have you both been participating in the strike since it started?

A Yes ma'am.

Q At the time the strike started was your rent on your apartment paid up?

A Yes ma'am.

Q Mr. Hall, I will hand you a series of letters stapled to- [223] gether, which will be marked for identification as General Counsel's Exhibits 7-A, 7-B, 7-C, and 7-D.

(Thereupon, the documents above referred to were marked General Counsel's Exhibits 7-A through 7-D, for identification)

Q (Continued) First directing your attention to General Counsel's Exhibit 7-A, I ask if you received that letter from the company?

A Yes ma'am.

Q And what did you do upon receipt of that letter?

A I went down to Teamsters headquarters.

TRIAL EXAMINER:

Speak up, please, sir.

A (Continued) I went down to the Teamsters headquarters, and they said they would look into it for us.

Q What did you do about paying your rent that they request the payment of in the letter?

A We got a money order and sent it in.

Q All right. Directing your attention to General Counsel's Exhibit 7-B, which is a letter dated March 1, 1958, did you receive that letter?

A Yes ma'am.

Q Attached to this letter of March 1, 1958, identified as General Counsel's Exhibit 7-B, there is attached a money order receipt and I ask if that is pertaining to the money order which you had sent to the company in payment of your rent?

A Yes ma'am.

[224] Q Is that the one referred to in the letter?

A Yes ma'am, that is the one.

TRIAL EXAMINER:

How did the money order slip get on there? Was it mailed with the letter or did you put it on later?

THE WITNESS:

I gave it to them after, in the letter, when I took them and gave them to them.

TRIAL EXAMINER:

Gave them to whom?

MRS. FASSIG:

You mean me?

THE WITNESS:
Yes ma'am.

MRS. FASSIG:
I stapled it so as not to become loose and lost. When it was returned with the letter I stapled it with the letter so it would not become loose.

THE WITNESS:
When I took the letter, I took the money order still with it.

Q Next, directing your attention to the letter identified as 7-C, the letter requesting you to vacate the property by a certain time, did you vacate the property or are you still occupying it?

A Still occupying it.

* * * *

[227] Q Mr. Hall, have you had any personal conversations with Mr. McCormick, the gentleman who signed these various letters addressed to you from the company?

A Yes, ma'am.

* * * *

Q Mr. Hall, you said you had had some conversations with Mr. McCormick. Can you tell me when the first such conversation was that you had with Mr. McCormick in regard to paying rent after the strike started?

A That was January 28th.

Q And where did this conversation take place?

A In his office.

Q And what were the circumstances of your being there? [228] Just tell us the circumstances.

A I went in to pay my rent for February, and he said he couldn't accept it until after the hearing.

Q Until after what?

A Until after the Union and the company had met. He said he would let me know sometime that day or the next morning; if he didn't, for me to come back in and he would accept the rent the next day.

Q Do you know whether or not the company and the union negotiators were meeting in a negotiating session sometime that day?

A They were supposed to have met, I believe it is the 28th.

Q Is that what Mr. McCormick was referring to? What did he say; can you recall more definitely?

A Well, he said they told him to hold up on accepting the rent until after the Union and the company met.

TRIAL EXAMINER:

Did he say who told him?

THE WITNESS:

No sir, he did not.

Q All right. When did you next talk to Mr. McCormick?

A The next day.

Q Where did this conversation take place?

A In his office.

Q Did you go back in?

A Yes ma'am.

Q Had you heard from him?

[229] A No' ma'am.

Q What time did you go back in the next day?

A That was in the afternoon, right after dinner.

Q What happened that day? Did you pay your rent?

A Yes, ma'am, he accepted the rent. He told me he didn't know whether he could accept any more or not.

Q But he took it that day?

A Yes, ma'am.

Q Did you have any further conversations with Mr. McCormick after that day when you paid your rent then for February?

A No, ma'am.

Q How thereafter did you make payment, or seek to make payment of rent?

A Sending in a money order.

* * * *

[260] MRS. JAMES OLIVER

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q (By Mrs. Fassig) Will you state your name?

A Mrs. James Oliver, 824 Osceola Avenue.

TRIAL EXAMINER:

Lake Wales?

THE WITNESS:

Yes, sir, Lake Wales.

Q Mrs. Oliver, are you an employee of the Florida Citrus Canners Cooperative?

A No, ma'am.

Q Is your husband?

[261] A Yes, he was.

Q Was he employed there up until the commencement of the strike?

A Yes ma'am.

Q Has he worked there since the strike started?

A No ma'am.

Q Where do you live?

A 824 Osceola Avenue.

Q Is that a company owned house?

A Yes ma'am.

Q And how long have you lived there?

A Three years in April.

Q Last April?

A Yes ma'am, this past April.

Q And prior to that had you ever lived in any company owned property, either housing or an apartment?

A Well we lived one time in one of the apartment houses, and one time we had a trailer parked on the company property.

TRIAL EXAMINER:

Did you pay rent for that?

THE WITNESS:

Yes sir.

Q At the time the strike started was your rent paid up?

A Yes ma'am.

Q For the month of January?

A It was paid ahead.

Q Who usually took care of paying the rent?

[262] A I did. Well, my husband, they took it out of his pay check when he was working, and then after the strike I mailed it in, money orders.

* * * *

[263] Q Mrs. Oliver, you say that at the time the strike commenced your rent was paid up ahead. Since the strike started have you had any conversation with Mr. McCormick regarding the payment of the rent on your house?

A No ma'am.

Q Has the company continued to receive rent from you and your husband since the strike started?

A Well, up until May 1st.

Q Yes.

A And not since May 1st. It was paid up until May 1st, and they have not accepted any since then.

Q Have you made any effort to pay any since then?

A Yes, ma'am, I sent in for the month of May and I sent in for the month of June. They both were returned.

Q How did you attempt to pay the rent for the months of May and June?

A Well, the month of May I sent a money order, and for the month of June I sent a check.

* * * *

[273] C. R. SHUMAN,

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q (By Mrs. Fassig) Will you state your name, please?

A C. R. Shuman, 439 G Street, Lake Wales.

Q Is that a house or an apartment?

A An apartment.

Q And what is the apartment number?

A 439 G Street.

[274] Q Do you have a separate apartment number? Apartment 19, 20?

A No.

Q There are no numbers assigned to the apartments at that address?

A Just 439.

Q Mr. Shuman, have you been employed by the Florida Citrus Canners Cooperative?

A For about 13 years.

Q All right. What department do you work in?

A Shipping department, warehouse.

Q And are you now out on strike?

A Yes ma'am.

Q Did you go out on strike when it started?

A Yes ma'am.

Q This place where you live, 439 G Street, you say, is that a company owned house or apartment?

A A company owned house, yes ma'am.

Q How long have you lived in that company housing?

A Well, in that special one I would say about two and a half to three years, something like that; I wouldn't be sure.

Q Had you lived in company owned property before?

A Yes ma'am.

Q For how long?

A I believe it was from 1945 until 1948, or either '49.

TRIAL EXAMINER:

And then there was a gap?

[275] THE WITNESS:

Yes.

Q Were you away from the company's employment during the period you were not in the company housing?

A No, the house caught fire and burned all of my furniture and everything, and at that time I couldn't get back in there. After I got furniture I had to rent another place.

Q At the time the strike started, in January of this year, was your rent paid up?

A Well, it was paid up until February the 30th.

Q It was paid for the month of February?

A Yes ma'am.

Q Mr. Shuman, I am handing you two letters, one which will be identified as General Counsel's Exhibit 10A, the one which is dated March 1, 1958, and the second one, dated April 9, 1958 will be identified as General Counsel's Exhibit 10B.

(Thereupon the documents referred to were marked General Counsel's Exhibits 10A and 10B for identification)

Q (Continued) I would like to ask you whether or not you received that letter dated March 1, 1958, the one that will be identified as General Counsel's Exhibit 10A. Did you receive that from the company?

A Mr. McCormick brought it around to the house, and I was gone at the time, so he dropped back later and brought it himself, Mr. McCormick.

Q And gave it to you?

[276] A Yes, ma'am. He asked me to read it and I said, "Thanks."

Q Was that all the conversation?

A Yes, ma'am, on that part of it.

Q What other part was there? I mean, what else?

A Well, that was all there was to it, when he brought me the letter.

Q Was there any conversation between you and Mr. McCormick at any other time pertaining to your housing?

A Well, before he brought me the first letter I went to his office and paid the rent.

Q When was it you went to the office and paid the rent?

A I believe it was February, about the 29th, 28th or 29th.

Q All right.

A And he says, "I can accept this rent, but" he says, "I don't know whether I can accept any more or not."

Q Did he give any reason why he didn't know whether he would be able to accept any more?

A Well, he just made a statement that he couldn't, he wouldn't be able to accept any more after that; he had a job, and he had to carry that out.

Q Did he state why he didn't know whether he would be able to accept any more rent?

A No, not that I remember of; that is, you know, why or nothing.

Q Did you ask as to why?

A No, ma'am, I didn't ask at that time.

[277] Q Well, that was conversation with Mr. McCormick in the last of February. Has there been any other conversation between you and Mr. McCormick?

MR. BOWDEN:
I think he identified that as the last of February.

MRS. FASSIG:
He said 28th or 29th.

TRIAL EXAMINER:
The 28th or 29th surely is late in February. I will note judicially that February did not have 29 days this year.

THE WITNESS:
It was the 28th or either the 29th day of February when I was up there talking with him.

Q Was it the last of February?

A Yes, ma'am.

Q I ask whether or not you have had any other conversations since then with Mr. McCormick about your rent or about your occupying the company house?

A Nothing but he sent the letter. He brought it the same way he had the first.

Q Was there any conversation at that time when he brought you the second letter?

A No, he just made a remark like he did before; he said," "Here you are, Charlie; read it." I said "Thank you," just like I did before.

Q Was that all?

A Yes, ma'am, that was all on the letter business.

[278] Q I ask you whether or not you received the letter from the law firm of Bradley & Johnson which is dated April 9, 1958, addressed to you, and which will be identified as General Counsel's Exhibit 10-B. I ask you if you received that letter?

A Yes, ma'am, I received it, too.

Q How was that sent to you?

A Mr. McCormick brought it to me.

Q Oh, Mr. McCormick brought out this letter, too?

A Yes, ma'am.

* * * *

[280] Q Have you had any conversation with any of the foremen or supervisory employees since you have been out on strike?

A With Mr. Rexford.

Q And when was this conversation?

A It was about two weeks after we went out.

Q And where were you at the time?

A On post 2.

Q And about what time of the day did the conversation take place?

A I would say it was in the evening of the day. I wouldn't know what time.

Q And where were you? Can you tell me specifically where you were with respect to the roadway or the company's property and so forth?

A Well, we were out on, next to the edge of, 27.

Q Is that route 27?

A Yes ma'am, and to the intersection of the plant.

Q I see.

A Well, now, we generally hold the pickets mostly on the[281] left hand side of the intersection; so he comes out from the plant and pulls over on the right hand side and calls me over.

Q Was he in an automobile, in his car?

A I believe he was in a pick-up truck he had, — not exactly a pick-up, it was a panel truck he had at that time.

Q Was anyone else with him?

A No ma'am, by himself.

Q Did you go over to the truck when he called you over?

A Yes ma'am, to see what he wanted.

Q All right. What was the conversation?

A He was making compliments about me being silly in walking out, quitting my job; he was sorry for the wife and the kids.

TRIAL EXAMINER:

You say he was making a compliment?

THE WITNESS:

Well, that is what he told me.

Q What did he say? Recall as best you can what the remarks were, what did he actually say?

A Well, what he was actually saying, that he thought that I was stupid to walk out and leave my job.

TRIAL EXAMINER:

What was it he said? Tell us what he said in his words, now.

THE WITNESS:

In his words, he said, he didn't see why a man like me was going to walk out and leave my job. I told him I wasn't leaving my job, but I was on strike. And then he was telling me about how sorry he was for the wife and kids.

TRIAL EXAMINER:

Is that what he said?

[282] THE WITNESS:

Yes sir.

Q All right, go ahead and tell us what else.

A And then I told him, I said, "Well, me and my wife has been together nearly seventeen years," and I said, "I don't know where she will starve to death now we are out." And then he brought up the same question again, that he was still sorry for the wife and kids.

Q What else was said?

A And he says, "Well, there ain't no use in you all standing out here and acting foolish this way." He said, "The company has got it fixed before you all came out, that you are not going to win or anything," Not telling us what there was to it.

Q Was there any further reply or remark by you?

A No ma'am, I just turned and walked off.

Q And he drove off?

A Yes ma'am.

MRS. FASSIG:

That is all.

TRIAL EXAMINER:

Mr. Bowden?

MR. BOWDEN:

Do you want to proceed with this after lunch?

TRIAL EXAMINER:

No, I think we may as well finish.

CROSS EXAMINATION

Q (By Mr. Bowden) Mr. Shuman, were you an employee of the company at the time you got your rental unit over there?

[283] A Yes, sir.

Q And were you discharged during the strike?

A Yes, sir.

Q When was your letter dated?

A January 21.

Q And that was when you were advised that you had been replaced and discharged?

A By a discharge paper, yes.

Q So then, when you received this letter that has been introduced as General Counsel's Exhibit 10-A and 10-B, you hadn't been an employee of the company for some one month or more, is that right?

A I hadn't worked for them then. In other words, I was out on strike, but I was still an employee, I figured.

Q You had not been in the yard doing any work?

A No, sir, I hadn't done no work, no, sir.

Q Did you work for Rexford?

A No, sir.

Q Who was your boss?

A Well, since I have been there I have had quite a few, but at that time when we came out I figure it was Emory Arnold.

Q Don't you know who your foreman was at that time?

A Well, he was over the shipping department, that is what I was unde .

[284] Q Well, you said you supposed. Was he or was he not your foreman?

A Yes, he was.

Q Haven't you got his name reversed?

TRIAL EXAMINER.

Is it Arnold Emory? Can't you answer, Witness?

THE WITNESS:

I wouldn't swear whether I had it backwards or not, because that is what I always call him. I always call him Arnold, all the time.

Q How long have you worked for him?

A I don't know for sure; about two years, two years and a half probably.

Q Have you ever worked for Mr. Rexford?

A No sir.

Q How long have you known Rexford?

A Approximately 10 or 11 years.

Q Are you neighbors, or do you visit at each others homes?

A No sir.

Q To what extent do you know him?

A Just while I was on the job and he was on the job, and him coming around.

Q You knew him, then, just as another employee of the company?

A That is right.

Q You had no friendship or —

[285] A No relation

Q — no relationship?

A No.

Q Who else was on the picket post there with you at the time Rexford came by?

A Well, there were two ladies over there on the picket. I can't place them just exactly who they were, but there were two ladies on picket there when I was there.

Q We are talking about the time Rexford came by.

A That is what I am talking about; there were two ladies there.

Q Were you in charge of the two ladies, or were you all carrying signs?

A No sir, I was not in charge of them.

Q Did he call anyone other than you over there?

A No sir.

Q When was the last time you had had any conversation with him, to your knowledge?

A Well, that is the only time, right straight conversation.

Q In other words, that is the first time you can remember since you have known Rexford that you have ever stopped and talked to him?

A Well, in that manner, yes.

Q Well, in any manner, where you have done any more than just speak to each other.

[286] A Nothing much more than just speak.

Q This is the first time, then, you ever had what you consider a conversation with him?

A That is right.

Q Then how did he know, for instance, if you know, that you had a wife and children at all?

A I imagine because he drove by the house a lot of times, all around on them clay roads and by.

Q But he did know that? Didn't he?

A Yes.

Q Then, with that limited acquaintance with you, he stopped and gave you this advice that you testified to?

A Yes sir.

Q That he felt sorry for your wife and kids?

A Yes, sir.

Q And that it was foolish for you to stay out?

A For me to walk out and leave my job, yes sir.

Q Have you had any further conversation with him?

A Not since then, no sir.

Q You said he called you stupid, or at least that was the impression you got from what he was saying. Didn't that make you mad?

A No sir, because there ain't no use getting mad about anything.

Q In other words, if he wanted to call you stupid it was [287] all right with you?

A Well, there ain't no use getting mad, and probably saying some thing that would hurt you. There's no use in saying it.

Q Were you all joking?

A No, sir.

Q Did you say anything at all to him?

A Well, no more than I just answered him that me and my wife had been marrie eventeen years.

Q Is that all you said to him?

A Yes, sir.

Q And at the end of this conversation you just turned around and walked off, and he drove off?

A Yes, sir.

* * * *

[288] EFFIE HARRISON

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q (By Mrs. Fassig) Will you state your name, please?
A I am Effie Harrison.

TRIAL EXAMINER:
Speak up, please, so we can all hear you.
Q Mrs. Harrison, will you give us your address, please?
A Box 253, Dundee.
Q Mrs. Harrison, how long have you been employed by the Florida Citrus Canners Cooperative?
A Since 1950.
Q And what department did you work in?
A Sectionizing.
Q Sectionizing department?
A Yes, ma'am.
Q Will you describe the work that is done in that sectionizing department for us?
A Well, sectionize the fruit out, divide it from the core, and pack it in cans and send it off.
[289] Q Is that work done in lines or belts, or how is it organized?
A In belts. There are six different belts.
Q And how many employees on each belt?
A Well, there are 56 places on the belt.
Q 56 sectionizers on each belt?
A Yes.
Q And in addition to those 56 sectionizers on each belt, are there any other employees, such as graders or checkers, or anything like that?
A Well, there are four checkers and an inspector.
Q For each belt?
A For each belt.

Q And then are there any foreladies, or how is your work supervised or inspected?

A Well, we have a forelady for three belts, and then she has a helper.

Q She has an assistant?

A Yes.

Q Now, who is your forelady?

A Edith Wise.

Q And who is her assistant?

A Naomi Kelly.

Q Is that Miss or Mrs. Kelly?

A Well, Miss, I suppose.

[290] Q What is her first name again, Naomi?

A Naomi.

Q Is that Kelly, K-e-l-l-y-, or K-e-l-l-e-y?

A I don't know.

Q Mrs. Harrison, when the strike commenced at the plant in January of this year, did you go out on strike?

A Well, we were all — we didn't work the day that the strike started, the sectionizing plant didn't, so I was then naturally home that day.

Q All right. Then did you work after that?

A I stayed off two days, and went back to work on Wednesday.

Q On Wednesday of the following week?

A Yes.

Q Were you working at the plant then, at the time a petition was circulated among the employees?

A I was.

Q And when was it circulated, that is with respect to — was it during working time, or was it during non-working time?

A Well, during working time.

Q And did you see the petition?
A Yes.
Q Was it brought to you?
A Yes, it was.
Q Who brought it?
A Well, the fruit man on our belt brought it around.
[291] Q Do you recall his name?
A Oh, Bush is his last name.
Q Will you describe just how he circulated the petition? Just describe to us what happened.
A Well, he came down and stopped at each one and asked — well, it was there for us to read what it said, and he wanted to know if we wanted to sign it.
Q Is that while you were working on the belt?
A Yes.
Q If you wanted to read it would it be necessary to stop your work in order to read it and to sign it?
A Yes, you would have to stop work.

TRIAL EXAMINER:
What happened to the belt while you stopped work?

THE WITNESS:
Well, the ones that he wasn't talking to right then just worked right on, or they could stop and talk, discuss it.
Q Did some of the employees stop work and discuss it with him, that you observed?
A Well, as he would come along and ask each one if they wanted to sign, well then, if they wanted to talk to him and ask about it, well, they did.

TRIAL EXAMINER:
Did you?

THE WITNESS:

Well, I read it, and that was all. I didn't sign it.

[292] Q Did you stop work in order to read it?

A Yes.

Q Was the petition circulated along the sectionizing belt more than one time?

A Yes, it was.

Q Can you recall how many different times?

A Well, I don't know how many times, but after the new ones started coming in from other plants after they closed, well, he would bring it around every time new ones came in.

TRIAL EXAMINER:

Who would?

THE WITNESS:

The fruit man.

Q This Mr. Bush?

A Yes.

TRIAL EXAMINER:

How long after you went back to work there was it before it was first circulated?

THE WITNESS:

Well, I don't know exactly. It was a week or maybe two weeks, I don't know the exact date.

Q Do you recall whether or not the forelady or the assistant forelady were present at the time the petition was being taken up and down the sectionizing belt for signatures?

A Well, I know that Naomi was up and down the belt one time that he was going up and down with it, but I don't remember about Edith.

Q Is either the forelady or her assistant, either one or the other, up and down the belts, checking the three lines that they [293] are responsible for, at all times?

A Most times there is one.

Q Or most of the time?

A Yes, there is one around.

TRIAL EXAMINER:

How many belts are there in the sectionizing department?

THE WITNESS:

There are six.

Q I think you said there are three belts assigned to each forelady and her assistant?

A Yes.

Q Could you give us the names of the other forelady and her assistant? Over the other three belts?

A Lola Kelly and Maggie Dubois.

Q And is Lola Kelly the forelady?

A Yes.

Q And Maggie Dubois is her assistant?

A Yes.

Q Will you describe for us the duties of the forelady and her assistant? Just what do they do?

A Well, they check cans, and they inspect, come along and inspect cans for each sectionizer, and — well, the assistant, she signs the cards and fills them out each morning.

Q What kind of cards are those?

A Well, we have a card hanging in front of us, and everytime we set off six cans they clip one number, and she fills out that [294] card and puts our name and the date and what size cans.

Q It is some kind of production record on what you are doing?

A Yes.

Q And that record is made by the assistant forelady on what you are doing?

A Yes.

Q And do you ask either the forelady or the assistant forelady if you have any questions arise concerning your work during the day?

A Yes.

Q If things come up you ask either one, which ever one is available?

A Yes, that is right.

MRS. FASSIG:

That is all the questions I have of this witness.

TRIAL EXAMINER:

Mr. Bowden?

MR. BOWDEN:

Yes, sir.

CROSS EXAMINATION

Q (By Mr. Bowden) Mrs. Harrison, when you refer to a belt, are you referring to just a conveyor that brings fruit to you on which you can work, and takes your sectionized fruit away when you get through with it?

A Well, I guess it is just the table where we work in front of us.

[295] Q As a matter of fact any number can work on the belt without interfering with the operation of the belt as such, can they not? You don't have to have, for instance, sixty people to run a belt?

A Oh no.

Q You can work it with twelve, can't you, depending on the amount of fruit coming down?

A I suppose so.

Q As a matter of fact, the belt just moves along in front of your table, and when you need fruit you just reach up on it and get a pan of fruit off the belt, don't you?

A It runs down behind us.

Q I mean you use it whenever you need to use fruit, you take the fruit off in a container?

A Yes.

Q Then, when you finish sectionizing your fruit you set your pan back on the conveyor and let it take it away?

A The empty tray.

Q That is right. Then the sectionizers who are working on the belt, as you call it, can come and go as they see fit, can't they?

A Yes.

Q As a matter of fact don't they leave the belt anytime they feel like it, go get a drink of water or go to the ladies room or anything like that?

[296] A Yes.

Q That doesn't interfere with the work of anyone else on the belt, does it?

A No.

Q How do you get paid on the belt?

A Well, you get paid by piece-work. It is piece-work.

Q So you only get paid for the work that you do?

A That is right.

Q Isn't there a great deal of variance in the pay of sectionizers? I mean one from the other.

A Yes.

Q Some of them that are fairly good make a lot more money than some that canot sectionize so fast?

A That is right.

Q So it is up to them in their work how much money they draw in any week, is that right?

A That is right.

Q So if you stopped to look at a petition you were stopping on your own time to look at it, weren't you?

A Yes.

Q Now, the fruit man that you mentioned, what does he do?

A Well, he sees that fruit is — well, is on the line, as it comes in.

Q Well, he just routes it from one line to the other to see that everyone has fruit to work with, doesn't he?

[297] A Well, there is one in the back that does that.

TRIAL EXAMINER:

There is no contention is there, Mrs. Fassig, that the fruit man was a supervisor or foreman?

MRS. FASSIG:

No.

MR. BOWDEN:

Well, that is all right, then, we can dispense with that.

Q You came back to work after the strike started, you said, is that right?

A Yes.

Q But you did not sign the petition when it was passed around?

A No.

Q Do you know from your own knowledge whether most of the other sectionizers signed it or not?

A Well, I don't know how many signed it.

MR. BOWDEN:

You don't know, I see. No further questions.

MRS. FASSIG:

Nothing further.

Q (By Trial Examiner) Do you punch a time card?

A Yes.

Q You didn't punch in or out at the time you took time off to read the petition did you?

A No.

TRIAL EXAMINER:

Anything further?

MR. BOWDEN:

Well, I would like to ask this:

Q (By Mr. Bowden) Do you get paid by the time card, or do [298] you get paid by the amount of clips you sectionize?

A By the amount of clips I sectionize.

Q (By Mrs. Fassig) That gives rise to a question. Is there any basic or minimum pay?

TRIAL EXAMINER:
I will take official notice of the fact that the Wage and Hour Act applies.

MRS. FASSIG:
That is right.

TRIAL EXAMINER:
A dollar an hour minimum.

MR. BOWDEN:
That is correct.

TRIAL EXAMINER:
I also have to take notice officially that the Wage and Hour Act has provision for overtime beyond 48 hours. I don't know whether that applies to this work or not. Does it?

MR. BOWDEN:
Well, we have the agricultural seasonal exemption, you know.

TRIAL EXAMINER:
Right. Anything further?

MRS. FASSIG:
Nothing further.

TRIAL EXAMINER:
That is all.

* * * *

ANNA BELLE DUNFORD

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q (By Mrs. Fassig) Will you state your name, please?

A Anna Belle Dunford.

[299] Q Mrs. Dunford, will you give us your address, please?

A Post Office Box 173, Dundee.

Q Mrs. Dunford, how long have you been working for the Florida Citrus Canners Cooperative?

A Approximately nine years.

* * * *

[304] Q Mrs. Dunford, how long had you worked in this sectionizing department?

A You mean —

Q During all of your employment working for the company?

A Yes.

Q For the past nine years. During the period of your employment there I will ask you whether or not it has customarily [305] been permitted for employees to obtain signatures for the Union, to engage in any kind of Union activities on behalf of the Union, during working time?

A Well, if I understand your question correctly I would say no. I am not sure I understand it.

Q Have you been advised of any rule that they were not allowed to obtain signatures to Union authorization cards,

or signatures to dues check-off authorizations, during the employees working time?

A Well, I couldn't answer that question, because I don't belong to the Union and I really don't know.

Q What has been the custom with respect to taking up collections or going up and down the sectionizing lines for matters unrelated directly to their work, without obtaining permission from Mrs. Marshall? Has that been permitted?

A Well, it has a time or two; not permitted, but it has been done a time or two, but we usually got rebuked for doing it and we are supposed to report to her and find out if we can do such, take up a collection for any particular matter; let her know what it is for.

* * * *

[308] LOYETTE McKIBBIN,

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q (By Mrs. Fassig) Will you state your name, please?

A Loyette McKibbin.

TRIAL EXAMINER:

Will you speak up, please, madam, so everyone in the room can hear you.

Q Will you give us your address, Mrs. McKibbin?

A Dundee, General Delivery.

[309] Q All right. Mrs. McKibbin, when did you go to work for the Florida Citrus Canners Cooperative?

A It was about five years ago, I think.

Q And what department did you work in?

A In the sectionizing department. I was a checker.

Q Will you speak a little bit louder, please?

A In the sectionizing department, and I was a checker.

Q You were a checker?

A Yes.

Q And who was your forelady and assistant forelady?

A Edith Wise and Naomi Kelly.

Q You continued to work after the strike started?

A I went back in to work on Thursday or Friday.

Q Of the week following the beginning of the strike?

A Yes ma'am.

Q Was the sectionizing department in operation before you went back to work?

A Yes, it was.

Q Now, were you working there at the time a petition was circulated among the employees in the sectionizing department?

A Yes, I was.

Q Was it brought to you?

A Yes.

Q More than one time?

A I think it was brought to me, the best I remember, three [310] times.

Q All right. Who brought it the first time?

A Bush, he is the fruit man; that is all I know about him.

A I think it was one morning the first time he brought it around.

Q Can you recall how soon it was after you had gone back to work?

A I would say about eight or ten days.

Q All right. Were you working at the time?

A Yes, I was.

Q I ask whether or not you stopped working in order to read the petition when Mr. Bush brought it to you?

A Yes ma'am.

Q And when was it brought back again, and who brought it?

A Well, he brought it back.

Q Oh, he brought it back again?

A Yes.

Q Did Mr. Bush say anything in regard to it when he brought it?

A Well, he brought it back that morning, and then later on in the day he came back with it and he said, "Have you changed your mind?" And I said no. And he said, "Well, this will be the last time around with it"; that would be my last chance to sign it.

[311] Q Do you know whether he took it all up and down the full belt that you work on?

A The first time that he brought it around he did.

Q And did each of the girls along the line stop their work to read it?

A Yes.

Q And those who desired to signed it?

A Yes.

Q You said the petition was brought, to your recollection, three times. Who had it the third time?

A Well, he did.

Q He brought it the third time?

A Yes.

TRIAL EXAMINER:

On the same day?

THE WITNESS:

It was the same day. We were having coffee or something so he brought it back down to us to see if somebody wanted to sign it, and he asked me then again, he says, "You haven't changed your mind"?

• • • •

[314] REDIRECT EXAMINATION

Q (By Mrs. Fassig) Mrs. McKibbin, do you have any time to stand around idle during your working shift, or are you busy all the time?

A As a usual thing, we are always busy.

TRIAL EXAMINER:

What happens when you take a coffee break?

THE WITNESS:

Well, whenever I take a coffee break there is one of the other girls that has got the fourteen women, she moves down and tries to keep mine up the best she can while I am out.

Q And then you do the same thing when she is out?

[315] A I do.

• • • •

MATTIE LOU SCARBROUGH,
a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q (By Mrs. Fassig) Give us your name, please.

A Mattie Lou Scarbrough.

Q And will you spell your first name and your last name?

A M-a-t-t-i-e L-o-u S-c-a-r-b-r-o-u-g-h.

Q Mrs. Scarbrough, what is your address?

A Box 213, Dundee, Florida.

Q And were you employed at the Florida Citrus Canners Cooperative?

A Yes, I was.

Q In what department?

A I was in the sectionizing department. I am a sectionizer.

Q You are one of the sectionizers?

A Yes, I am.

Q And who is your forelady?

A Well, Mrs. Marshall, as you know, is over all of us.

Q Yes.

[316] A But Mrs. Kelly is my forelady.

Q And who is her assistant?

A Miss Maggie Dubois.

Q Were you at work there at the time the petition was circulated among the employees, sometime after the strike started?

A Yes, I was.

Q Was it passed up and down the belt that you work on?

A Yes, it was.

Q And who circulated it along the belt you work on?

A Well, Mr. Parden is the one that brought it around on our table on the first day I saw it.

Q Can you spell his name for us?

A No, I'm afraid I cannot.

MRS. FASSIG:

P-a-r-d-o-n?

TRIAL EXAMINER:

I would guess P-a-r-t-i-n.

MR. BOWDEN:

P-a-r-d-e-n, I think.

MRS. FASSIG:

Thank you.

Q What is his job?

A Well, he was the fruit boy, we called him. He took care of the fruit on the belt. You see, it came in behind us, and we turned around to get the fruit. A lot of times, if it came in too fast it was apt to jam, and some of it would jump out, and would hurt somebody. His job was to block the fruit so it would not do that, and then unblock it so it [317] could go on down the belt.

Q More or less to regulate the inflow of fruit to the rate that the girls were able to sectionize it?

A That is right.

Q At the time Mr. Parden brought the petition along the line where you worked, were the girls at work then?

A Yes, we were all working.

Q And did you stop work to read it?

A Well, yes, I did, but I had made up my mind I was not going to sign it before it came, so I didn't take up much time reading it.

Q Did he make any comment or explanation regarding it?

A Well, yes, he told us that if we didn't sign it we wouldn't get our back pay. The company said they would pay us from the 16th day of December up until that time, you know, the back pay; we would get the raise and then they would pay us the raise from back in December up to that present time.

Q Was the petition circulated along your belt more than the one time?

A Yes, it was brought —

Q How many times?

A Three times that I know of. Mr. Parden didn't bring it the second and third times.

Q Who brought it on the next two times?

A Mr. Bush brought it the second and third times.

[318] Q And he is the fruit man for some of the other belts?

A Yes, on the other side.

Q And each time the petition was brought along the belt did the employees stop work to read it?

A Well, I didn't. I didn't notice if the others did or not, but I knew I wasn't going to sign it, and I just didn't take up any time with it. I told him no, and that was that.

Q Mrs. Scarbrough, are you sectionizers free to take time out from your work whenever you wish to?

A Well, as long as we make the average we are.

Q Do you have a certain quota you are supposed to make?

A Well, you see, we are supposed to make a dollar an hour, but they only require us to make 90 cents an hour, and if we make 90 cents an hour we are free to go out any time we wish. I mean, they have never put a limit to that, they have never said we couldn't go out.

Q (By Trial Examiner) When you make only 90 cents an hour is that the amount you are paid?

A No. Well, I say no; I really don't know, I'm sorry. I really don't know if it is or not. We work on piece work, you see, and I don't know, I suppose they would have to pay us a dollar an hour. I'm not sure about that.

Q Have there been times when you made only 90 cents?

A Well, no, I make better than a dollar an hour, I am happy to say.

[319] Q The problem never came up in your case?

A No, it never came up.

Q (By Mrs. Fassig) Are you one of the fast sectionizers that make over the minimum?

A I guess you would call me about the average, I think.

* * * * *

[337] IRBY BRIMLOW,

a witness called by and on behalf of the General Counsel, being first duly sworn was examined and testified as follows:

DIRECT EXAMINATION

Q (By Mrs. Fassig) Would you state your name, please?

A What?
Q State your name, please.
A Irby Brimlow.

TRIAL EXAMINER:
Spell that, please sir.

THE WITNESS:
I-r-b-y B-r-i-m-l-o-w.

[338] TRIAL EXAMINER:
Mr. Witness, you will have to speak up so this Reporter can get your testimony. Speak up loud.

THE WITNESS:
I can't hear good myself.

TRIAL EXAMINER:
Speak up, then.

THE WITNESS:
O. K.

TRIAL EXAMINER:
We will do the same.

Q (By Mrs. Fassig) Mr. Brimlow, what is your address?

A Frostproof, Post Office Box 353, Harrel Ave.

Q Mr. Brimlow, are you one of the striking employees of the Florida Citrus Canners?

A Yes ma'am.

Q Have you been out on strike ever since it started?

A Yes ma'am.

Q Have you had any conversations with any of your foremen, either before the strike started or sometime shortly after the strike started?

A Any of the foremen?

Q Foremen, f-o-r-e-m-e-n, any of your foremen?

A Yes ma'am, since it started.

Q Who was your foreman?

A Mr. Kelly.

Q Do you know his initials?

A H. W.

Q H. Kelly?

A H. W.

[339] Q H. W., thank you. When was this conversation with Mr. Kelly?

A It was just about a week after the strike.

Q And where was it, where did it take place?

A It was on North 1st Street, just across the railroad, going out of town that way, you know, going north.

TRIAL EXAMINER:

Near the plant?

THE WITNESS:

Yes sir, on No. 5 post, we call it, picketing post.

Q Were you on picket duty at that time?

A Yes ma'am.

Q What time of the day about?

A About 5 in the afternoon.

Q Was Kelly in a car, was he on foot, or how?

A He was driving a pick-up.

Q All right. Just tell us about this incident; just what happened?

A A train came along and stopped across the road, it

was close to the railroad, and held the traffic up, and he was about the third or fourth car back, which put him about even to where we were standing; and he called me to him and he said, "Irby, you are doing the wrong thing." I says, "I don't think so." He says, "You are doing the wrong thing." He says, "If you all win it won't amount to anything." He says, "If anything they will go and shut down earlier, because they are [340] going to do away with the men peeling," the peelers, you know, men who peel by hand, and he says, "They will have machines altogether after this season." And then he says, "How long have you worked for me?" I says, "Thirteen or fourteen seasons, first and last." He says, "Well, see there? I have always given you a job any time you asked me for it, haven't I?"

I said, "Yes, so far." He said, "If you are going back in the plant, be there in the morning and go to work." He said, "If we don't use any men peelers on any other season I can still give you a job." And I told him, I said, "I couldn't do that." And he said, "How come you couldn't?" I said, "Well, Slim, I worked with you the first six or seven seasons when there wasn't a union," and I said, "Did we catch hell or did we not?"

"O. K.," he says, "but why pick on this company?" I said, "Well, this company, the first work I ever done paid less than they paid at Frostproof for the first work that I did under Mr. Kelly, where there wasn't a union."

Q Will you give that whole statement over again? I don't think it is clear. What was it you told him?

A I told him, I says, — You mean when they asked me why?

Q Yes.

A I told him, I says, "The first work — " Let me get it straight now. I said, "The first six or seven seasons that I [341] worked under you here when there wasn't a union," and I asked him then, "Did we catch hell or not?" He said, "Yes, we caught it, but why pick on this company?" I said, "Well, the first six or seven seasons — " I mean, "The first work I done in the plant was with this company, and their wages were less than than it was down where there wasn't a union, at Frostproof." And I left him in '40 and I didn't come back until '50, and I left then and went down to work with Donald Duck.

Q Is this what you were telling Mr. Kelly?

A Pardon?

Q Is this going on with your conversation with Mr. Kelly at the time he stopped and talked to you at the picket gate?

A I don't quite get you.

Q We want you, sir, to tell us what the conversation was between you and Mr. Kelly when he stopped there, wnen you were on picket duty.

A You just wanted the conversation?

Q Just tell us what was said by you and by Mr. Kelly.

A I told him then, I says, "O. K., I went to work here where there was a union, and it was so much better and all, and the union says they want to continue on as good," and I said, "I have reaped the benefits of it so long, until I will have to go along with it."

Q Did he say anything further?

A Pardon?

[342] Q Was anything else said?

A He asked me not to say anything about it, when he went to drive off. About that time the train was moving

on, and he said not to say anything about it, he was just talking to me as an old friend.

Q What was your job, what job did you perform?

A Peeled fruit.

Q You were peeling fruit?

A Yes ma'am.

Q How many employees were there peeling fruit by hand?

A Now they do different schedules. At the time I quit, or at the time of the strike, there were only thirty-something I believe, around thirty.

Q Have you had any further conversations with Mr. Kelly?

A With which?

Q Any other conversations with Mr. Kelly?

A No.

MRS. FASSIG:

That is all.

CROSS EXAMINATION

Q (By Mr. Bowden) Mr. Brimlow, you speak loud enough so the Reporter can hear you even though you are talking to me, if you will, please sir.

A O. K.

Q This plant where you said you got hell, that wasn't this Florida Citrus Canners?

[343] A No sir.

Q That was at another plant?

A Yes sir.

Q Then Mr. Kelly moved to this plant and you came over with him?

A Well, not at the time he did.

Q I mean later you came and worked with him?

A Later.

Q For a period of several years, has the company been installing automatic peelers in the plant?

A What period?

Q Peeling machines?

A What did you say about it?

Q Have the company, the last several years, been installing automatic peeling machines in the plant?

A Not for several years, I don't know of. It has been for two or three years; something like that.

Q Did Mr. Kelly start this conversation with you on the road, or did you walk over to his car while he was stopped there?

A I walked to his car. He called me.

Q Were there other people standing around there at that time?

A Yes sir.

Q Were there other cars?

[344] A Parked, yes.

Q Is it always necessary to speak to you loud so that you can understand people?

A Yes sir.

Q Was Mr. Kelly speaking to you loudly, so you could understand him?

A Yes sir.

Q You had no trouble understanding what he was saying, did you?

A No sir.

Q Did anyone else come up and join in the conversation?

A No sir.

Q Do you know if anyone else heard what he was saying to you?

A Yes sir.

Q Who else was that, sir?

A A boy of his.

Q A boy of his, who?

A Of his.

Q What was his name?

A I couldn't tell you his name, I can't remember his name.

TRIAL EXAMINER:

How old was he?

THE WITNESS:

He is a teen-age boy. I wouldn't know.

Q Was Mr. Kelly sitting there with the motor of his car running or not?

A I don't think it was. I am not positive about that.

[345] Q Was the train passing at this time, too?

A No.

Q Was it a train on a crossing?

A Yes.

Q Was it moving?

A No sir.

Q Well, it had to move before he could go, didn't it?

A Yes sir.

Q And did your conversation continue until the train passed?

A Just about. It ended just about the time the train began to pull off.

Q I see.

A The train had just begun to move as the conversation was ended.

Q And what did you do then, Mr. Brimlow?

A I went back to the post where I was picketing.

* * * *

[356] J. B. BATSON,

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q (By Mrs. Fas.ig) Will you state your name, please?

A J. B. Batson.

Q And where do you live, Mr. Batson?

A I live out between Bartow and Waverly down there — I mean Dundee and Waverly.

Q What is your post office address?

A It is Route 2, Lake Wales, on the route.

Q Mr. Batson, have you been employed by the Florida Citrus Canners Cooperative?

A Yes sir.

Q And how long have you worked for the company?

A Five years.

Q What department do you work in?

A Capping machine department.

Q In which plant is that located?

A In the single strength.

Q Single strength juice plant?

A Yes ma'am.

Q And who was your foreman?

A Slick Cannon.

[357] Q That is on the day shift you worked, then?

A Yes, ma'am.

Q Are you one of the striking employees?

A Yes, ma'am.

Q Have you been out ever since the strike started?

A Yes, ma'am.

Q Before you came out on strike did you ever have any conversation with any of the foremen —

A No.

Q — regarding the union or union matters, or the strike in any way?

A No, ma'am, nothing but just what I heard the others talking. I have come in on a conversation that the other people were talking about. Of course, after I got in it they mentioned something to me about it.

Q When was that?

A That was about a week, somewheres along there, I couldn't say for sure.

Q A week along there?

A Before we came out on a strike.

Q Was any foreman present during any of that conversation, do you recall?

A Yes, ma'am.

Q Who was it?

A Jack Milner.

[358] Q Milner or Miller?

A Jack Milner.

Q Can you spell it? M-i-l-n-e-r?

A Yes ma'am. That is all I know, Jack Milner.

Q And what is he foreman over?

A He is night foreman over the night shift of the clean-up crew.

Q The clean-up crew?

A Yes ma'am.

Q What other employees were present on this occasion?

A Well, he was talking to Leonard Gray, and there was another boy, I don't know his name, we called him Dick something, I don't know his real name. There was Leonard Gray and me and that boy, and there were some more there if I can think of their names right off.

Q Was Leo Brown present?

A Yes ma'am, Leo Brown, he was present.

Q What was the conversation? Did you overhear any conversation between Mr. Milner and any of the other employees?

A He and Leonard Gray was talking when I walked up about it.

Q What did you overhear?

A I heard him ask Leonard what would they do if they walked out on a strike, would he go out with them? And he told him yes, he would. And he told Leonard, he said, "Don't you think [359] that they could hard time you when you come back in?" He told him, yes sir, he thought they might could.

Q Who said that?

A Leonard Gray. And he told Leonard, he said, "Well, you might get fired when you come back."

* * * *

[367] VADA WATSON

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q (By Mrs. Fassig) Will you state your name, please?

A Vada Watson.

Q Is that Mrs. Watson?

A Yes, ma'am.

Q Will you give us your address, please, Mrs. Watson?

A 804 Osceola Avenue, Lake Wales.

Q Mrs. Watson, how long have you been employed by the Florida Citrus Canners Cooperative?

A Well, except one season I didn't work for them, ever since they have been in operation, since 1930. When they started I was there the first day.

Q What was that? I couldn't hear you.

A The day they started in 1930 I started when they started operating, but I haven't worked completely, steady, since then, because I was off when my husband was taken back. When he passed away I lost a year then, and then I packed fruit one season. Outside of that I have worked ever since.

Q Mrs. Watson, is the place where you live a company-owned house or apartment?

[368] A It is a house.

Q It is a house?

A Owned by the company.

Q And how long have you lived in that company house?

A Well, I moved in there the 15th of January in 1941.

Q And are you one of the striking employees?

A Yes ma'am.

Q Have you participated in the strike from the very beginning of it?

A Well, I was there the morning they struck, but we didn't know they were struck until we got on the job, and I stayed on the clock that morning, way up in the morning. I didn't ever work, but I was out there in the fruit yard that morning, and I believe the next morning for a few minutes, to get some things up there, but I didn't work.

Q What things were they? Some personal belongings, personal things?

A Yes ma'am.

TRIAL EXAMINER:

You will have to speak up. Don't let your voice drop.

Q Mrs. Watson, since you have been out on strike have you been contacted in anyway by any representatives of the company in regard to your returning to work?

A Well, Mr. Ashley called, and Mr. Burgess.

Q Give us the time, the day if you can, when it was.

[369] A That was on Saturday night.

Q What Saturday night?

A Saturday night after the 17th, which would be the 18th of January.

Q All right.

A And asked for me to return to work Monday morning.

Q Who did you talk to, who gave you the message?

A Mr. Burgess was the one that gave me the message, but Mr. Ashley was the one talking to him.

Q Have you yourself talked to anyone from the company?

A Yes ma'am. He came out Monday morning to see if I got the message, and I told him —

Q Who came out? Mr. Ashley?

A Yes ma'am.

Q What time was it he came out to your home?

A He didn't come to my home. He met me on the way from down at the trailer to the house in Mr. Barnes' yard, and he asked me did I get the message to come to work, and I told him I did, but I didn't want to go back, I didn't want to return to work until this was settled.

TRIAL EXAMINER:

Is that what you told him?

THE WITNESS:

Yes sir, I told him I couldn't start to go back to work.

Q Was anything further said?

A No ma'am, not a word.

[370] Q Mrs. Watson, I am handing you a file of papers, and I will direct your attention first to the top letter, one dated February 28, 1958, addresed to you, which will be General Counsel's Exhibit 12A, and will ask you if you received that letter from the company.

A Yes ma'am, I certainly did.

Q All right. Now, the next document is a receipt dated March 4, 1958 — that is, using the digits 3-4-58 — which will be General Counsel's Exhibit 12B, and I ask you whether or not you received that receipt.

A Yes, I did.

Q And the next document is another receipt dated 3-7-58, which will be General Counsel's Exhibit 12C, and I ask you if you received that receipt.

A Yes ma'am.

Q And the next is a letter dated March 11, 1958, addressed to you from the company which will be General

Counsel's Exhibit 12D and I ask you if you received that letter.

A Yes ma'am.

Q The next letter is one dated April 9, 1958, addressed to you by the law firm of Bradley & Johnson, which will be General Counsel's Exhibit 12E. Did you receive that letter?

A Yes ma'am, I certainly did.

* * * *

[373] Q Mrs. Watson, have you had any personal conversation with Mr. McCormick at any time since the receipt of the first of these letters, the one dated February 28, 1958? You may examine the letters.

A Yes ma'am, I did talk to Roy when he came out. I believe it was the letter he brought me.

Q Which letter are you referring to now?

A I believe it was the one, I am not definitely sure, that he was asking me to vacate at a certain time. They wanted me to accept the rent — they would have accepted the rent up until the 16th. I believe this is the one, and they returned half of it because they wanted me to move by the time that was out.

Q Are you referring to the letter dated March 11, 1958?

A I believe that is right. I am not sure.

Q Which is General Counsel's Exhibit 12D?

A Yes. You see, the time was to vacate within 16 days, and that would have made the time, would have been just half of the month. That was the money that was returned.

Q Did he bring that letter out to you?

[374] A Yes ma'am, he did.

Q And you had a conversation with him at that time?

A Yes ma'am. I asked him what they meant by doing that, what he meant by bringing that back, and he said, "Well, I'll tell you, I have a job to do. I work for the company just like you used to, and they told me to bring it. I had to bring it." And I told him I understood his part of it, and that I didn't think hard of him for doing it, because I knew he had his work to do.

Q Was there any further conversation?

A Yes ma'am. I told him that I considered myself still an employe of the company, and that I didn't feel that I was doing wrong in what I had done, and I felt sure I would go back to work, I intended to go back to work, when this was finished and all was settled.

Q When what was finished?

A The labor dispute, the strike.

Q Did he make any reply to that, Mrs. Watson?

A Yes ma'am, he did. He said, "Well, you don't have any union or contract or anything," and he says, "I don't know, I advise you to get out by the time they specify if possible."

Q (By Trial Examiner) Did you get out?

A No sir, I did not.

Q Are you still there?

A Yes sir, I am.

* * * *

[380] MARVIN B. WOODS

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q (By Mrs. Fassig) Will you state your name, please?
A Marvin B. Woods.
[381] Q And your address, Mr. Woods?
A Postoffice Box 1714, Lakeland, Florida.
Q Will you state your occupation, Mr. Woods?
A I am an attorney at law.
Q And Mr. Woods, I will ask you whether or not you have been retained as an attorney by the Teamsters union to represent any of the strikers of the Florida Citrus Canners Cooperative —
A Yes, I have.
Q — in respect to the eviction proceedings?
A Yes, I have.
Q Will you relate, briefly and summarily for the benefit of the record, how the action was first commenced? Review the actions taken up to date.

THE WITNESS:
May I refer to my file?

MRS. FASSIG:
Yes, sir.

A This action began by virtue of a removal-of-tenant suit, same being No. 18566 on file in the County Court in and for Polk County, Florida, wherein Florida Citrus Canners Co-op, a corporation, filed a removal-of-tenant suit against one Arthur McKinney. This was filed on April 18, 1958, and summons was duly issued to Mr. McKinney. The matter was set for hearing before the Hon. C. M. Wiggins on May 1, 1958, at which time a defense was raised as to the petition on the grounds that the plaintiff was in

effect coercing the defendant from their right to bargain collectively. At that time [382] the County Judge, without taking any testimony but merely argument on the law and statements by both counsel that it would be appealed to the Circuit Court regardless of which way the decision of the County Judge went, suggested that it be disposed of by injunctive procedure directly in the Circuit Court. That suit has been filed, a petition for injunction.

Q By whom and in behalf of whom; who filed the injunction proceeding?

A I was the attorney. It was filed on behalf of Arthur McKinney, Vada Watson, H. L. Pickles, Johnson Byrd, O. J. Garrett, Charley Shuman, James D. Oliver, E. C. Harbuck, Huey Hall and Local Union No. 173. A motion to dismiss was filed by Florida Citrus Canners Co-op, and that matter is set for hearing next Thursday before the Hon. John Register, Circuit Judge 10th Judicial Circuit in and for Polk County.

• • • •

[384] DAVID F. WINGATE

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q (By Mrs. Fassig) Will you state your name, please?

A David Wingate.

Q And your address, Mr. Wingate?

A Route 2, Box 801, Winter Haven, Florida.

Q And Mr. Wingate, what is your official position with the charging union?

A I work for Joint Council 89 of the Teamsters Union, located in Auburndale, Florida. I work in the capacity as a Business Agent for Local Union 173, Local 60 and Local 444. Local 60 is located in Winter Haven, Local 444 in Auburndale, Florida.

[385] Q And 173 is located where?

A Lake Wales.

Q Mr. Wingate, have you ever been employed by the Florida Citrus Canners Cooperative?

A No, I have not.

Q And how long have you been a representative of the Teamsters union?

A Since March 1st, 1956.

Q And will you tell us what your occupation was or what you did before that?

A Before that I was Business Agent for the Federal Local unions, A. F. of L., located in the same localities as the now Teamsters union.

Q And how long were you representing those Federal labor unions, A. F. of L.?

A From 1952 until March 1st, 1956.

Q During that period did you assist in the negotiation of contracts with the Florida Citrus Canners Cooperative?

A I did.

Q Does the Local which is the certified representative of the employes of the Florida Citrus Canners Cooperative, in other words Local 173, have any collective bargaining contracts with any employers?

A It has one collective bargaining agreement.

Q With whom?

[386] A With the Lake Wales Citrus Growers Cooperative, here in Lake Wales.

Q Do you recall approximately the date of that contract?

A The contract, I think, was consummated in about December of 1957.

Q Did you participate in the negotiation of that contract with that employer?

A I did.

Q Have you participated in the collective bargaining negotiations on behalf of the various Locals you have named with any other employes beside the Florida Citrus and the Lake Wales?

A I have.

Q When did you first attend any of the collective bargaining negotiations between the charging union and the company involved in this proceeding, the Florida Citrus?

A As I recall, the first meeting I attended was June 4, 1957.

Q And who represented the union in the negotiations prior to that date?

A Would you rephrase that, please?

Q Who was the union's principal negotiator during the first period of the negotiations between Local No. 173 and the company?

A John Roberts.

Q Was he assisted by any of the members; was there a committee?

[387] A There was a committee, yes.

Q Will you give us the names, if you recall, of the members of the bargaining committee?

A Yes. C. L. McLean, Melba Blair, H. P. Brooker, Theodore Hall, Newvell Godwin.

Q Will you spell that first name, please?
A N-e-w-v-e-l-l.
Q And the last name?
A G-o-d-w-i-n.

TRIAL EXAMINER:
Are they employes?

THE WITNESS:
They were employes of Florida Citrus Canners.
Q Have you named the full committee now of the employes, the members of that committee?
A With the exception of one. Chapman Burgess was also a member of that committee.
Q I think I asked you, did I not, who was the principal negotiator first?
A John Roberts.
Q And how long did Mr. Roberts serve as the union's principal negotiator?
A From the beginning of the negotiations, which I believe started in April, until the first part of September. In other words, the first meeting he did not attend was September 19th of 1957.
Q (By Trial Examiner) Did you attend all the meetings from [388] June 4th to September 19th?
A No, I did not.
Q Did you attend any of them in between?
A I attended some of them.
Q (By Mrs. Fassig) Which meeting or meetings did you attend?
A As I recall, I attended one August 2nd.
Q I think you did testify you attended one in June?
A In June, correct.

Q What became of Mr. Roberts? Why did he no longer serve as the principal negotiator?

A Mr. Roberts went to work with the Minute Maid Corporation as a personnel man for that company.

Q (By Trial Examiner) When?

A The first part of, the first week in September.

Q Did he attend any meetings after going with Minute Maid?

A Well, sir, that is a question that there is some doubt about, because we understood later that he was on, Minute Maid's payroll while he was still working for the union, so I don't know actually.

Q Do you know when he went with Minute Maid?

A I don't know the exact date.

Q (By Mrs. Fassig) Mr. Wingate, after Mr. Roberts left who then became the union's principal negotiator?

A I was assigned to that job as chief negotiator.

Q (By Trial Examiner) As I understand it, then, you attended [389] only two meetings before September 19th?

A I believe that is correct, sir. Now I may have attended some for just partial, going in and sitting in as a spectator for maybe an hour or so and going somewhere else on other duties, but those are the only two I recall that I was in the complete meeting.

Q But on June 4th and August 2nd did you participate as a negotiator?

A I was more or less as a spectator, sir.

Q (By Mrs. Fassig) Mr. Wingate, did Mr. Roberts leave with the union working copies of the contracts which had been under discussion between him and the company negotiators?

A Yes, he did.

Q Did he also leave with the union any correspondence which he had exchanged with the company with respect to negotiations?

A Yes, there were some letters that had been exchanged between him and the company concerning the negotiations.

(Mrs. Fassig hands document to Mr. Bowden)

MR. BOWDEN:

Your Honor, if you will excuse me, this doesn't have a name on it, so I am just trying to compare it to see if this is the same one, to identify it.

TRIAL EXAMINER:

Yes.

MRS. FASSIG:

I have asked Mr. Bowden if we could stipulate that General Counsel's Exhibit 13 for identification is a copy of the union's first contract proposal submitted to the [390] employer, to the company.

MR. BOWDEN:

My answer is, we will stipulate from a fast check that the text is correct, with the exception that a wage schedule was not included in the original proposal, which is attached to this one.

MRS. FASSIG:

Was it submitted at some later date during the negotiations?

MR. BOWDEN:
Not on that proposal at all.

MRS. FASSIG:
Not in connection with this proposal at all?

MR. BOWDEN:
No.

Q Do you have any knowledge concerning that, Mr. Wingate?

A Mr. Bowden is right. I am sure there was no wage proposal attached to that copy.

TRIAL EXAMINER:
Are you detaching the wage proposal?

MRS. FASSIG:
Let the record show that I have detached then the wage proposal, which is the last page attached to what will be General Counsel's Exhibit 13 for identification.

(Thereupon the document above referred to was marked General Counsel's Exhibit No. 13 for identification.)

Q I will ask Mr. Wingate if that was left by Mr. Roberts with the union when he left?

TRIAL EXAMINER:
This is the exhibit will is identified as G.C. No. 13?

MRS. FASSIG:

Yes, and which Mr. Bowden agreed is the union's first proposal submitted to the company.

[391] A Yes, this was left in the office by Mr. Roberts.

MRS. FASSIG:

At this time I will move the admission of General Counsel's Exhibit 13.

TRIAL EXAMINER:

Any objection?

MR. BOWDEN:

No objection.

TRIAL EXAMINER:

Is there going to be any evidence as to when that was submitted, Mrs. Fassig, during the negotiations? All this shows is that Mr. Roberts turned it over to the union, and this witness found it among the papers or was given it. Is there any evidence as to when it was submitted by the union to the company?

MRS. FASSIG:

I thought our stipulation was that this was the first contract proposal which was submitted by the union to the company.

TRIAL EXAMINER:

Yes, but when?

MRS. FASSIG:

I thought your question was about evidence as to whether it had been submitted.

TRIAL EXAMINER:

No.

MRS. FASSIG:

Mr. Bowden, will you stipulate that it was submitted to the company in the April meeting, the first meeting actually held between the company and the bargaining committee?

MR. BOWDEN:

Yes. That is April 16th, I believe.

MRS. FASSIG:

April 16th.

TRIAL EXAMINER:

The stipulation is received. The exhibit [392] has been offered, has it not, and received. There is no objection to the receipt of the proposal?

MR. BOWDEN:

No, sir.

TRIAL EXAMINER:

All right, it is received.

(The document heretofore marked General Counsel's Exhibit No. 13 for identification was received in evidence.)

TRIAL EXAMINER:
Off the record.

(Discussion off the record.)

MRS. FASSIG:
Could we have a ten minute recess for the purpose of verifying the documents to be discussed?

TRIAL EXAMINER:
All right, we will take a ten minute recess.

(Short recess.)

TRIAL EXAMINER:
The hearing will be in order.

MRS. FASSIG:
May I have the reporter read back where we were when we adjourned?

TRIAL EXAMINER:
Yes.

MRS. FASSIG:
What is the last thing on the record?

(The reporter read as it appears on page 389 as follows:

"Q Mr. Wingate, did Mr. Roberts leave with the union working copies of the contract which had been under discussion between him and the company negotiators?

"A Yes, he did.

"Q Did he also leave with the union any correspondence which he had exchanged with the company with respect to negotiations?

[393] "A Yes, there were some letters that had been exchanged between him and the company concerning the negotiations.")

Q (By Mrs. Fassig) Mr. Wingate, I am handing you a letter of Mr. Bowden addressed to Mr. Roberts, dated May 10, 1957, and a contract proposal, and will ask you if these are the matters or some of the files that were left by Mr. Roberts with the union? I will state for the record that the letter from Mr. Bowden to Mr. Roberts will be General Counsel's Exhibit 14-A, and 14-B is a contract proposal.

A I recognize them as having come from Mr. Bowden to Roberts.

MRS. FASSIG:

And, Mr. Bowden, may it be stipulated that this contract, which will be General Counsel's Exhibit 14-B, is a copy of the company's first proposal to the union?

MR. BOWDEN:

Yes.

MRS. FASSIG:

Which was transmitted with the letter of May 10th. May that be in the stipulation?

MR. BOWDEN:
I think that is right.

TRIAL EXAMINER:
The stipulation is received.

MRS. FASSIG:
At this time I will offer General Counsel's Exhibits 14-A and 14-B in evidence.

TRIAL EXAMINER:
Is there any objection?

MR. BOWDEN:
No objection.

TRIAL EXAMINER:
They will be received.

(Thereupon the documents above referred to were received in evidence and marked General Counsel's Exhibits Nos. 14-A and 14-B.)

[394] MRS. FASSIG:
May it be stipulated, Mr. Bowden, that what will be General Counsel's Exhibits Nos. 15 and 16 are letters exchanged between yourself and Mr. Roberts?

MR. BOWDEN:
Yes.

TRIAL EXAMINER:

Will you state which is which, please, ma'am, and the dates?

MRS. FASSIG:

Yes, I will. General Counsel's Exhibit No. 15 is a letter addressed by Mr. Bowden to Mr. Roberts dated June 12, 1957. General Counsel's Exhibit No. 16 is Mr. Roberts' reply to Mr. Bowden under date of June 13, 1957.

At this time I offer General Counsel's Exhibits 15 and 16.

MR. BOWDEN:

No objection.

TRIAL EXAMINER:

They will be received.

(Thereupon the documents above referred to were received in evidence and marked General Counsel's Exhibits Nos. 15 and 16.)

* * * *

[401] Q (By Mrs. Fassig) At the September 19th meeting who was present on behalf of the union?

A I was present to take over as the chief negotiator.

Q Finish telling who was there for the union in addition to yourself.

A I believe the full committee was there that day.

Q All right. And who was there on behalf of the company; who were the company negotiators?

A Mr. Bowden and Mr. Stephenson.

Q Just the two of them?

A As I recall it, yes, ma'am.

Q All right. Now will you describe that meeting as fully as you can recall, telling us what was said by both the company negotiators and by yourself. Was Mr. Bowden the principal spokesman at this September 19th meeting?

[402] A Yes, ma'am.

TRIAL EXAMINER:

And did you do the talking for the union?

THE WITNESS:

Yes, sir.

Q All right. Now recall and relate that meeting to the best of your ability.

A Well, as the meeting opened I informed the Company committee that Mr. Roberts would not be present, that he had took a job with management, and in the future, as far as I knew, I would be the chief negotiator instead of Roberts. I also explained to them that he had not left his notes made in previous negotiations at my command, and I didn't know where they were, and due to that I thought we should go back over the previous agreements and review them, so that I could sort of get the feel of the negotiations and know where we were.

Q (By Trial Examiner) Did you ever get the notes?

A I never did get the notes, no, sir.

Q Well, did you ever review with Mr. Roberts what had been covered down to September 19th?

A No, sir, I never did.

Q (By Mrs. Fassig) All right. Continue.

A I told the company at that time that any previous agreements reached that I would honor them, but since I was handicapped by not having the notes of Mr. Roberts that it would be necessary for my information that we go through and check on what had been agreed to; and that is what principally took up [403] the majority of that meeting that day.

TRIAL EXAMINER:

Before you get too far into that meeting, do you have any knowledge of the number of meetings that were held between August 2nd and September 19th?

THE WITNESS:

There are two, I believe.

TRIAL EXAMINER:

All right, proceed.

Q All right. Did Mr. Bowden review for you the tentative agreements which had previously been reached between the company and Mr. Roberts on behalf of the union?

A That is correct, he did.

Q Do you have in your possession the copy of the company's proposal that you were negotiating with respect to that day, or that was used at any time Mr. Bowden was reviewing the prior tentative agreements?

A Yes, I took a copy I have here in my hand to go through and make notations on what had been agreed to.

TRIAL EXAMINER:

Which exhibit is that?

THE WITNESS:
This is General Counsel's 14-B.

TRIAL EXAMINER:
All right.
Q Then are there notations appearing on 14-B, the contract proposal which you have in your hand now?
A Yes, there are.
Q When were they made on that copy of the contract?
A September 19th.

TRIAL EXAMINER:
Who made them?

[404] THE WITNESS:
I did.
Q Are there also notations made by you at any later date, any date after September 19th, or was that the last time that that contract was negotiated on?
A This is the last time that we used this contract as a basis of negotiations.

TRIAL EXAMINER:
I don't think that answers the question specifically, which was whether there were any notations made on there after September 19th?

• • • •

[418] Q All right. After Mr. Bowden reviewed for you the prior tentative agreements which had been reached with respect to the company's proposal, will you take up

your narrative of what transpired during the negotiating meeting; what happened next?

A I suggested that since we had been negotiating from the union's proposal, and since there were many things in the union's proposal that wasn't covered, we take the union's proposal and negotiate from it.

[419] Q Excuse me, you just testified that since you had been negotiating from the union's proposal. I thought you had been discussing the company's proposal?

A I meant the company's proposal, I made a mistake. So I would suggest that we take the union proposal and negotiate from it for a while. Mr. Bowden says, "All right, what do you want to talk about?" And I said, "Well, we will just go to some article in there that is not covered in the company's proposal and talk about it." And then he made the suggestion that because of the fact that Roberts was gone, and I alleged I didn't have any notes, and so forth, that what would be the union's thought on taking the old A. F. of L. contract and using it as a basis for negotiations? So I told him that I didn't know, but I would have a recess with my committee and we would discuss it, that if it would expedite the negotiations any at all I was perfectly willing to consider it with the committee and see what their thoughts were on it.

Q (By Trial Examiner) And that was the contract which you yourself had helped negotiate in the past?

A That is correct, yes, sir.

Q While you were with the A. F. of L.?

A Yes, sir.

Q You were familiar with it, then?

A Yes, sir.

Q (By Mrs. Fassig) Have you finished telling us what

hap- [420] pened at that meeting, then, or was there any further discussion?

A No, there was further discussion. As I said, the committee did recess, and we discussed the — .

Q Without repeating what was said between your own union committee, what did you report back to Mr. Bowden?

A Well, we decided to accept his offer, with the provision that if the company was agreeable to the provisions of that proposal and that we would not be going back negotiating all the provisions in that article as they were, but rather that if the company were agreeable to the provisions of that contract, then we would accept that suggestion and prepare a new proposal based on that agreement.

Q What did you ask Mr. Bowden? You said with this provision. What was the conversation between you and Mr. Bowden?

A Well, I asked Mr. Bowden, after we returned from recess, if that meant that the company was agreeable to the provisions of that proposal, and he said that the company was agreeable to those provisions in that proposal.

Q (By Trial Examiner) All of them, you mean, as a whole?

A Yes, sir.

Q That included wages also, I assume?

A I suppose so. We hadn't discussed wages. I think the intent was more or less the contract provisions rather than the Addendum A.

[421] Q (By Mrs. Fassig) Without testifying what the intent was, what was said by Mr. Bowden to you regarding what you should do on the basis of this A. F. of L. contract?

A Well, Mr. Bowden said that he felt that it would simplify the negotiations if we would take that agreement and

go through it and delete the parts that we were not in agreement with and wouldn't accept, and indicate that we would accept the other parts of it, and then add anything that wasn't covered under that agreement, that we had been negotiating on.

MRS. FASSIG:

I will ask to have the A. F. of L. contract marked for identification.

(Thereupon the document above referred to was marked General Counsel's Exhibit No. 17 for identification.)

MRS. FASSIG:

May we stipulate that General Counsel's Exhibit 17 for identification is the old A. F. of L. contract to which Mr. Wingate has referred in his testimony, the one that had previously been in effect between the company and the Citrus Workers Local Union No. 24217?

MR. BOWDEN:

I will.

TRIAL EXAMINER:

That stipulation is received.

If I may interrupt for a moment, does that contract indicate the period of its duration?

MR. BOWDEN:

Yes.

MRS. FASSIG:
The date January 31, 1955 is at the bottom of the cover page of it.

[422] TRIAL EXAMINER:
That is when it started, but when did it end? Does it show?

MRS. FASSIG:
Yes; it provided under Article XXII, Duration, that it should be in effect to and including November 1, 1956.

TRIAL EXAMINER:
All right.

MRS. FASSIG:
At this time I offer General Counsel's Exhibit 17.

TRIAL EXAMINER:
Any objection?

MR. BOWDEN:
No objection.

TRIAL EXAMINER:
It will be received.

(The document heretofore marked General Counsel's Exhibit No. 17 for identification was received in evidence.)

Q (By Mrs. Fassig) Mr. Wingate, how did the meeting of September 19th conclude? Have you related to us all that occurred during that meeting?

A Yes, I have related everything but the understanding that was made at the end of the meeting.

Q What was that?

A I informed the company that we would present them with a contract, a new proposal based on this, at the next meeting; but, however, I also informed them then that I had been selected as a delegate to the convention in Miami, and it was starting in the next few days, and it would probably be in early October before I would be back.

[423] Q (By Trial Examiner) Was any date reached for a future meeting?

A As I recall, we decided on October 9th.

Q Was that a date you suggested?

A I don't really remember, sir.

Q At any rate, it is the date you agreed to?

A That is correct.

Q You are not charging the company with any delay between September 19th and October 9th?

A No, sir.

TRIAL EXAMINER:

All right.

Q (By Mrs. Fassig) What did you do between the date of the September 19th meeting and the next meeting, which was held in October?

A Well, I prepared notes and so forth in order to get this agreement. I told the company at the time that that would give us an opportunity, long enough that we could work out this new proposal that I have just mentioned, and I made notes and so forth and left it with the committee

and another representative to draw up that agreement in my absence, which was going to be approximately two weeks, and this was done, not as accurately as if I had done it myself, because they couldn't read my notes as well as I could even, which is not too good; but anyway, when I came back the proposal was prepared.

Q (By Trial Examiner) When did you get back?

[424] Around October 6th, I believe.

Q Did you meet on October 9th as agreed?

A No, for some reason the meeting was held October 10th instead of October 9th.

Q (By Mrs. Fassig) Do you know the reason?

A As I remember it Mr. Bowden, who flies down, ran into some bad weather, and it would be the next day before he could reach here on account of the weather conditions. I know that happened, and I think that was the meeting that it happened.

Q Mr. Wingate, at this time I am handing you a draft of a proposal which will be General Counsel's Exhibit No. 18, and will ask you to tell us what that proposal is?

A This is the draft of the new proposal, based on the old A. F. of L. agreement, and as I will explain this, the parts of the old A. F. of L. contract that we had no argument with was simply marked O. K., the article was marked O. K. rather than being written out.

(Thereupon the document above referred to was marked General Counsel's Exhibit No. 18 for identification.)

Q (By Trial Examiner) It indicates it in this exhibit you have here in the form in which it was submitted to the company?

A That is correct, yes, sir.

Q When did you submit it?

A I submitted it at the October 10th meeting.

Q During the course of the meeting?

[425] A Yes, sir.

TRIAL EXAMINER:

All right.

Q (By Mrs. Fassig) Mr. Wingate, I will ask you whether or not the copy I have handed you is your own copy, your own working copy of that proposal?

A No, this is not my copy.

Q Will you tell us what became of your own working copy?

A I wish I knew.

Q Well, has it become lost?

A It has become lost, yes.

* * * *

[452] Q Well, do you recall what occurred or transpired during the October 31st meeting? I mean, what was the subject of discussion?

A That is a meeting where we touched on about every disagreement that we had, and we made no headway, and I suggested going back over the clauses, and I was informed by Mr. Bowden that we could do it if we wanted to but there was no use in doing it, that the company was not going to agree to a hot cargo clause or the protection from a saving clause, and that we could go back and belabor the issues if

I wanted to do it but he didn't see any point in it, and as we went over and briefly touched on the disagreements that we had in the complete negotiations, I told the company committee at the adjournment that I was going back, that we had to do something [453] to expedite these negotiations; that the people were working, they were anxious for a contract, and I wanted to do something to expedite it. I was going to take into consideration all the arguments pro and con about the different issues that we were not in agreement on, and I would delete some and I would modify others, and try to put together a workable agreement that according to my impression of the negotiations we could both live with, and that as soon as I got that agreement together I would call them and we would meet on it, or I would send it to them.

Q Did you draw up a third complete proposal then?

TRIAL EXAMINER:

Before getting to that, at the adjournment of the October 31st meeting did you have any understanding as to when you would resume again?

THE WITNESS:

I don't believe so, sir. I believe that I said that as soon as I got this agreement compiled, and so forth, that I would get in touch with them; that since we were, as Mr. Hamilton or Mr. Bowden put it, only belaboring issues, that I wanted to do something to try to expedite and consummate the agreement.

Q Mr. Wingate, I am handing you what will be General Counsel's Exhibit No. 20, and will ask you if that is the third

contract proposal which was submitted by the union to the company as a complete contract proposal?

A Yes, it is.

[454] (Thereupon the document above referred to was marked General Counsel's Exhibit No. 20 for identification.)

Q I will ask you, how was the proposal submitted to the company?

A Through the mail.

Q Is this simply a copy of the one you mailed to the company?

A Yes, ma'am, it is.

* * * *

[455] TRIAL EXAMINER:

The stipulation is received. Can it be recited as of what date it was received?

MR. BOWDEN:

We refer to that one, your Honor, as the proposal of November 23rd.

MRS. FASSIG:

Is that the date the company received this one?

MR. BOWDEN:

Yes.

* * *

Q (By Mrs. Fassig) At this time, Mr. Wingate, I am handing you the duplicate copy of General Counsel's Exhibit No. 20, and ask you whether or not that is your own working copy of that particular proposal?

A It is.

Q Does that copy contain any notes placed on it by you?

[456] A It does.

Q Will you tell us when you put those notations on that copy of the contract?

A It was around December 1st or 2nd.

Q Where were you at the time? Just explain to us when you put the notations on there.

A I was in Mr. Stephenson's office at the plant at the time I made these notations.

Q All right. Was that meeting between you and Mr. Stephenson one requested by you, or how did that meeting come about?

A It developed that I called Mr. Stephenson and asked him did he receive the contract proposal which I had tendered, and he said he had. I asked him what he thought of them. He said he didn't see too much wrong with them; it seems to be in substance what we had talked and argued about all through these negotiations, but he said there were some changes in it that he would like to talk to me about, without my committee and without his attorney, just he and I get together and discuss them; and he didn't want me to make a special trip that day, but if I was going to be in the vicinity of Lake Wales in the next day or two that he would like me to drop in and see him, and that he would discuss the things with me that he wanted to inquire about in this last proposal.

Q All right. Did you do so then?

A I did.

[457] Q All right. Now will you go through General Counsel's Exhibit No. 20, and to the best of your recollection relate the conversation, the comments by both Mr. Stephenson and yourself, during this meeting when you conferred with him about this contract.

A Well, as I entered the office Mr. Stephenson told me that this was a meeting off the record, without the interference of anybody; that we wanted to see just how close together we were, and that there were some, what he called some minor changes in this that the company would like, or he would like. He didn't know if they were so important or not and it didn't mean that the company would not accept the proposal without those changes, but he wanted to talk to me and see if there was a possibility that we could get together and change these various things. He said there weren't too many, and they were minor.

And I said, "Well, that is perfectly all right with me; let's go through and see where we are at. Now," I says, "I am going to make some notes on here for my information, because whatever comes out of this I want to report to my committee and see what their attitude is toward the objections that you have to this proposal." And we started in at the preamble of the proposal. Mr. Stephenson said he didn't see that the word "affiliated" and so forth made any difference one way or another as to the legality of the contract.

And in the "Witnesseth" article — It is not an article, [458] it is preceding Article I, he questioned the words "hours of labor", that is in the first sentence, or in the first line, and I told him well, that was identical with the old

A. F. of L. agreement and I thought it was all right, but if he wanted to change it I would make a note of it and I would recommend it, because I didn't think it was too important.

He says, "Now I am just going through here and point out the things that I think is wrong, that we would like to be changed," and there are many of the articles that has no notations at all on them, because we merely went to the ones which he described as he would like some change.

In Section (b) of Article II — Excuse me, he didn't want a change in that. It was in Section (d); he didn't have no objections to the section, but he said because of the fact that it dealt with grievances it should be under the Grievance Procedure rather than in Article II, the Recognition clause. I told him that we had no objections; I didn't, and I was sure the committee would go along with moving that section over to the Grievance Procedure.

On Article III, Section (b), we previously had agreed to; in fact, it was taken from the old A. F. of L. contract. He said he would like to have two weeks notice before change; that he would agree that the weekly payday would be as stated, but the company may change that schedule by giving the employees two weeks notice. I told him that sounded not too bad, and I would talk to the committee about it, I thought it was a minor [459] issue.

Article IV, the only objections he made was to the wording of Section (b) of paragraph 2, and he said he thought that should read, where in the second line it read "work for the employe," "for the employe or employes on the next regularly scheduled work shift," that they would be notified.

The quotation is "on the," and the "ly" on regularly was an addition.

Q Will you read the sentence the way Mr. Stephenson said he wanted it to read?

A Yes, I will be glad to. "If an employe or employes are not on duty at the time the company has knowledge that there will not be work for the employe or employes on the next regularly scheduled work shift, the company shall notify the employe or employes, provided the company has knowledge where the employe or employes can be contacted."

TRIAL EXAMINER:

What follows after "there will not be work"?

THE WITNESS:

"for the employe or employes on the next regularly scheduled work shift."

TRIAL EXAMINER:

I see.

Q What was your response to that?

A I was agreeable to that. I told him I didn't think that was important at all.

On Holidays, Article V, Mr. Stephenson said they thought they could give us one paid holiday. We had originally started [460] out asking six paid holidays a year, and had eventually, in this second proposal that we were referring to, dropped it to two paid holidays, and he asked would we accept one holiday, Christmas day, and drop the other one, in order to reach an agreement?

Q What did you reply?

A I said I had no authority to concede the holiday, but I would certainly take it up with the committee when I talked to them, and see if they wouldn't reconsider and accept the one holiday, since we were so close to coming to an agreement.

Article VII, Seniority, Section 3, Mr. Stephenson said he would like the words starting in the middle of the sixth line, "The oldest employe in seniority, *provided they can perform the work*, desiring the new position or vacancy, must make it known *in writing* to the company," etc. Now the "provided they can perform the work" was not in the draft; that is the wording that Mr. Stephenson said that he would like to have in there, and the "in writing" is also an addition.

TRIAL EXAMINER:

Did you agree?

THE WITNESS:

Yes, sir. I told him I didn't think we would have any fuss over that.

He further observed that Section 5, in the second paragraph, which involves the posting or bulletinning of vacancies, should not be in Section 5 but should be in Section 3, that pertains to that particular operation or —

[461] TRIAL EXAMINER:

Did you agree?

THE WITNESS:

Yes, sir, yes, sir, I agreed, certainly. It didn't make any difference where in the agreement it was, as long as it was consistent.

The next objection Mr. Stephenson raised was in Section 9, that deals with supervisors doing production work. He said that they were prepared to agree that supervisors may not do maintenance work at any time, providing — Would you read that back, Mr. Reporter?

(Last paragraph read.)

THE WITNESS:

Strike "not". It is "may do maintenance work at any time, provided it does not result in a loss of work of any *regular* maintenance employee," and the word "regular" was the insertion.

TRIAL EXAMINER:

Did you agree to that?

THE WITNESS:

Yes, sir. Mr. Examiner, in these things I say I agreed to, I told him that I could see nothing wrong, and I would gladly recommend these changes to the committee.

TRIAL EXAMINER:

You were just agreeing to submit it to the committee, then?

THE WITNESS:

Well, I was agreeing to it, and I was going to submit it to the committee, of course, for their final approval of it.

TRIAL EXAMINER:

With a recommendation?

THE WITNESS:

Yes, sir. Section 10 has to do with that [462] agreement we reached in October, that the company was not concerned with whether they had rotating shifts or shift preference, and in this talk with Mr. Stephenson he indicated that they had changed their minds and they wanted rotating shifts.

Q (By Mrs. Fassig) What was your reply to that?

A I told him that the question had been taken back before the people when this question was raised in the negotiations; in fact, I myself was not positive of what kind of seniority or shift they wanted; I didn't know if the majority would rather have them rotate or whether they would rather have shift preference of the senior employes. So in the discussion of that, and the company said they had no objection either way, we would take it back to the people and ask them, to make sure which one they preferred, and I believe it was in the meeting of November 14th that this particular question was brought up and they said that they had rather have shift preference.

TRIAL EXAMINER:

Do you mean November 14th?

THE WITNESS:

November 14th, yes.

TRIAL EXAMINER:

Up to now I don't think there is any reference to the fact that there was a meeting then, is there?

MRS. FASSIG:

He means an expression of the Local union meeting.

THE WITNESS:

A Local union meeting.

MRS. FASSIG:

To get an expression of the wishes of the [463] employes.

TRIAL EXAMINER:

Oh, all right.

A (Continued) And I told him that the people had voted on that; we had taken back what the company had told us, and the people had indicated that they had rather have shift preference, although I had heard some rumors later that there was a lot of them that didn't; so I put it in there in that manner so that it could be very easily agreed on by striking the sentence and putting rotating shifts.

Q Was anything said as to whether or not this would be taken up with the negotiating committee? In your talk with Mr. Stephenson I am referring to.

A Of course. On each and every thing we discussed, that was the understanding.

Mr. Stephenson had no objections to Article VIII, Probationary Employees, except — and incidentally, there had been a previous agreement with the company; they had proposed 15 days probationary period in their original pro-

posal, but he asked about giving 30 days probationary period for maintenance employees, and I told him that I was sure that we would go along with that, that in some of the negotiations in other plants they had already given that, and we certainly wanted to give this company the breaks that any of the others in the immediate vicinity got.

Article IX, Management Prerogatives, is an article which [464] the union hadn't ever proposed or agreed to, but in trying to embody something in this modification, or this contract rather, that would call for a minimum of changing, I put the Management Prerogative clause in this agreement. Mr. Stephenson said that he didn't see too much wrong with it himself, but he was not a lawyer, so he would accept it if his attorney would. That was the statement made regarding Article IX.

TRIAL EXAMINER:

Just a moment. Suppose we take a five minute recess.

(Short recess.)

TRIAL EXAMINER:

On the record.

Q (By Mrs. Fassig) Will you take up Article X next, Mr. Wingate.

A Article X, Check-off, he said the company may agree to that. Of course they wouldn't until it was the last, or practically the last thing they would agree to, as it was one of their bargaining clauses, and they certainly wouldn't agree to it until they knew what the rest of the contract was going to consist of for sure.

Article XI, Vacations with Pay, Mr. Stephenson asked me did I realize — I had told him previously, as we started to discuss it, that one of the other companies had agreed, or actually proposed to us, that identical clause, and he said, "I believe that was Minute Maid, wasn't it?" I said yes. He said, "Well, we have 300 or 400 piece workers, seasonal workers, [465] that they don't have in that plant, so that type of thing, vacation, would be more of a financial burden on us than it would on them."

Q Are you referring to Minute Maid; referring to their operation and the Minute Maid plant?

A That is correct; and he said he thought that the article should be toned down a little. He didn't elaborate, he said it would have to be toned down a little, he thought.

Q What was your reply to that?

A I replied, as usual, that if we were going to come as close as it looked like we were to an agreement, we would certainly tone down and modify anything in order to consummate the agreement.

On Adjustment of Grievances, which is Article XII, Mr. Stephenson indicated that in (a) or Step No. 1 of the procedure, he saw no use in having three days from the time the grievance occurred, but to change that to two days, and also put in "from the time the employe becomes aware of the grievance."

Q Where? Where did he want that put in?

A That was in the first line of Step No. 1 under Grievance Procedure; and also to insert "two days" in the last sentence.

Q Whereabouts would that be inserted?

A That would be at the end; in other words, it would

read, [466] "They shall attempt to adjust such grievance within two days." The two days is the addition.

Steps No. 2 and No. 3 there were no objections to.

Q Just a minute. What was said by you with reference to his proposed changes in Step No. 1?

A I told him I really didn't think they were important; I mean two days, actually, from the time the employe becomes aware of it, was more liberal in my thinking than it would have been if it had been just a flat three days from the time it occurred.

He also suggested that Step 3 be inserted in the Arbitration clause, where it refers to it going to arbitration.

Q Excuse me. Do I understand that he wanted paragraph (c), referring to Step No. 3, transferred and included as part of paragraph (f), dealing with Arbitration?

A I have got a note here, please, ma'am, that I am having just a little trouble making out. As I recall it now — I am having just a little bit of trouble in making out my own writing — Insert (d) — No, this is referring back to Article II, that that is where he felt that (d) of Article II should be inserted, and leave out Section (d) on this page.

TRIAL EXAMINER:

What was to become of Step No. 3 now?

THE WITNESS:

That was to remain, sir. The insertion referred to Section (d) rather than to Step 3. There was no further changes asked for on that article.

[467] Q How about the Arbitration paragraph?

A In Arbitration, the arbitration clause in this draft, this proposal, is not the same as the one that had been agreed to in a previous proposal. I think on September 19th it was verified that arbitration was agreed to, and this follows that language down to "the arbitrators shall remain in continuous session to decide the issue," and that had not been a previous agreement to be inserted in Arbitration, which Mr. Stephenson called to my attention. I bracketed that, and told him that we would be glad to remove that if that was the objection to it. And he also stated that he thought we ought to put some kind of limit on the expense of the arbiters, with no suggestion of how much or anything, but he said it seemed like that ought to be limited in some manner, and I agreed with him, because I thought, well, I will get by as cheap as I could, too.

Article XIII, Union Bulletin Board, there had been a previous agreement on this particular article, and this is not identical with that previous agreement.

Q Can you tell us what the previous agreement was, the substance of it?

A The previous agreement was that the company would allow the union a bulletin board near each of its bulletin boards, to be maintained and kept by the union, but it would not be used for anything, the posting of anything that was derogatory [468] to the company or its employes, and the company agreed then, too, that they would agree not to post anything derogatory to the members, the union or its members; and this does not reflect that agreement.

TRIAL EXAMINER:

Well, why did you draw it that way?

THE WITNESS:

For the sake of brevity, sir. This one, if you will read it, it says the only use we can use that for is for the posting of notices of the union.

TRIAL EXAMINER:

Yes.

THE WITNESS:

And I interpreted that, that had been agreed to in other negotiations, the interpretation being that notices of meetings and so forth of the union could be posted, but as far as political propaganda it would not be considered as a notice of the union.

Article XIV, Protection of Rights. That is all that was left of our Protection of Rights clauses, commonly referred to as the hot cargo clause, and Mr. Stephenson stated he felt that they could agree with that down to the last clause; and it is short, and I will read it for clarification: "It shall not be a violation of this agreement and it shall not be cause for discharge or any other disciplinary action, if any employee or employees refuse to go through the picket line of a union, *and the company shall not request any employe or employes to go through a picket line.*" Now that last clause is what Mr. Stephenson objected to, and I bracketed that out and told him [469] that we would go along with that.

Q By the last clause you refer to the phrase, "and the company shall not request any employe or employes to go through a picket line"?

A That is correct.

Q That is what he wanted struck?

A Yes, ma'am.

MRS. FASSIG:

All right.

A (Continued) And I so noted. Article XV reflects a proposal, or it reflects language from the original A. F. of L. agreement and a proposal, language that was inserted in a proposal of the company, the first proposal they presented to us. Mr. Stephenson also objected to the last phrase of that article.

Q Beginning with what words?

A "and rules and regulations of Federal agencies having jurisdiction over employes of the company in this category, anything in this agreement to the contrary notwithstanding."

Q You say he wanted that portion only struck from the provision?

A He wanted that portion struck.

Q Was he agreeable to the first half of the clause, then?

A Yes, ma'am.

Q Did you indicate whether or not you would recommend striking the portion he wanted struck?

A Oh, yes, ma'am. I told him that in my opinion it was a [470] play on words, and if it was all in there or just part of it, it was the law and it would be carried out anyway, so there wasn't any article to be real concerned about.

Article XVI, Absenteeism, Tardiness and Leave of Absence. Now that is a different clause from one that had previously been proposed by the company, and I believe there had been agreement reached on. This article is very brief, where the other covered practically a page, and this is not — this clause here doesn't restrict the company as much as the clause which I had left out and reinstated this particular clause, because of the fact that we had also been

reaching an agreement with another company, and it was very brief and concise, and I figured that it was the substance of what we were going for, even though it was more restrictive on the employees and held them more responsible than the previous article, but Mr. Stephenson raised no objection to that article whatsoever with me.

He said that Article XVII, the No Strike, No Lockout clause, was one that he wanted to check further, too, and as he reiterated, he couldn't see where it was too unfair, but he wanted further time to check that particular clause.

He agreed that Article XVIII was satisfactory. He said that Article XVIII was satisfactory, except starting with the fourth line from the bottom on the right hand margin he wanted this struck: "If the parties do not agree on a mutually satisfactory replacement, either party shall be permitted all legal [471] ecomonic recourse in support of its demands, notwithstanding any provisions in the agreement to the contrary."

TRIAL EXAMINER:

You could make your testimony much shorter there if you just say he wanted the last sentence dropped, and not reading it.

THE WITNESS:

Yes. I am sorry.

He voiced no objections to Article XIX, as he stated that if people were required to wear uniforms bearing the company insignia those uniforms would be paid for by the company, but insofar as the sectionizers were concerned it had

not been a hard and fast rule that they had to wear any specific uniform, and it was not a condition of employment.

Q Mr. Wingate, I am sorry, I don't understand your testimony that Mr. Stephenson said if the employes were required to wear any kind of uniform bearing the company's insignia. I don't see any reference to insignia in that provision.

A That is what Mr. Stephenson was explaining to me, as what he considered a uniform of the company, required by the company, was one that maybe would have "Florida Citrus Canners" or "Donald Duck" or something written across the back of it, but in the normally white dresses that the sectionizers wear that they are not considered uniforms, and it was not compulsory.

Article XX, Discharge and Other Disciplinary Action, Mr. Stephenson asked that in Section (b), in the second line, "he" and "his" should be changed to "it" and "its".

[472] TRIAL EXAMINER:

Is that all?

THE WITNESS:

That is all on that. I was wondering if you wanted any further elucidation on that or whether I had made it clear enough.

Article XXI, General Provisions. Mr. Stephenson suggested that the language in paragraph 1 of that article read that there shall be no *scheduled* split shifts at any time.

Article 2 he raised no objection to.

Q You mean paragraph 2?

A Paragraph 2, I am sorry, he raised no objection to; and paragraph 3, he said many times the company didn't know a week ahead when they may shut down, but he was willing to say that insofar as practical the employees would be notified one week in advance of impending layoffs.

Article 4 —

TRIAL EXAMINER:

Section 4.

THE WITNESS:

I am sorry. In paragraph 4 of Section 4, he wanted the words inserted, "who is off clock for meal period."

TRIAL EXAMINER:

After "No employe"?

THE WITNESS:

Yes, sir. His next objection, or suggestion for a change, was in section 9, dealing with Leaves of Absence in cases of pregnancy. He suggested that it read, "not more than six months before or less than thirty days after" confinement.

[473] Q (By Trial Examiner) Where was that to be inserted?

A I didn't work out the method, sir; I just made notations on each side of it.

Q Did he question you about what this phrase meant, "according to individual necessity"?

A That was discussed, yes, sir, because in cases of preg-

nancy, one person might be able to go to work in a month, and it might take two. I was trying to get it so they would be excused until such time as they were able to return to work if they had a complicated case.

There was no objection to Section 10. And incidentally, I don't recall if that is embodied in our previous proposal, but it is a problem that has presented itself to the union and the company in the past; that is, senior employees who may have an opportunity for a job in another state —

TRIAL EXAMINER:

If there was agreement on it, there is no objection to it, I don't see any point in discussing it.

THE WITNESS:

There was no objection to it. I was just trying to explain why.

TRIAL EXAMINER:

We don't need a sales talk on the point, if it was agreed to.

THE WITNESS:

O. K. And, of course, Duration was not discussed.

Q (By Mrs. Fassig) How did this meeting between you and Mr. Stephenson end? What was the concluding discussion regard- [474] ing it?

A Well, I told him it appeared to me that we just about had us a contract. I suggested he go and arrange for a meeting as immediately as possible, and I would get my committee together, and we would get together and I am sure would iron out these few differences that he had in-

dicated. And he told me, well, he would have to get in touch with his attorney and find out when he would be available, and it would probably take him two or three days.

I waited two or three days, or maybe four or five days, and hearing nothing from him I called him again, and asked him had he set a meeting, was he ready to set a meeting? He said no, he wasn't ready yet; and I called him again in two or three more days and asked him about having a meeting with our full committees and ironing out this thing and getting it signed.

And finally I decided that he wasn't making any preparations for a meeting. I had been telling my committee every day that I had talked to him and we were going to have a meeting in the immediate future; so in order to clear up the situation I sent Mr. Stephenson a telegram and asked him to meet the next day to consider this proposal.

Q Mr. Wingate, I will ask you whether the document which I am handing you now, the top one, which will be General Counsel's Exhibit 21-A, is the telegram to which you just referred, [475] that you said you sent Mr. Stephenson requesting a meeting?

A That is correct, Mrs. Fassig.

Q And is this, which will be General Counsel's Exhibit 21-B, the reply which you received from Mr. Stephenson on the same date, December 11th?

A Yes, ma'am.

Q And is this, which will be General Counsel's Ex-

hibit 21-C, the telegraphic reply from you to Mr. Stephenson's telegram of December 11th?

A That is correct.

MRS. FASSIG:

At this time I will offer General Counsel's Exhibits 21-A, B and C.

MR. BOWDEN:

No objection.

TRIAL EXAMINER:

They will be received.

(Thereupon the documents above referred to were received in evidence and marked General Counsel's Exhibits Nos. 21-A, 21-B and 21-C.)

Q Mr. Wingate, during this meeting which you had held with Mr. Stephenson, in addition to reference to your contract proposal which is General Counsel's Exhibit No. 20, had there been any discussion between you and Mr. Stephenson regarding any proposed increase in the wage rate?

A After we had gone through this proposal as I have just outlined, he says, "The union is not serious about the 25 cents an hour they are asking, are they?" I said, "That is what the people felt that they wanted, was 25 cents an hour." And [476] he said, "You are not really serious?" I said, "Well, to be frank with you and perfectly honest, Steve, I believe that 15 cents an hour, if we get together

15 cents an hour, along with a fair contract, that the people would accept it." And he said, "Well, one company has offered 7-1/2. I think it is going to be mighty hard to get them to go higher than that." I said, "Well, if our people drop to 15 cents, I think it is going to be pretty hard to get them to come down any lower than 15 cents an hour." And he then says, "Well, it went down 2-1/2 cents last night." I said, "Well, that is news to me." He said some of the Teamster representatives at another company had offered and suggested and took, said they would recommend 12-1/2 cents. I said, "Well, I am familiar that there was a meeting and I was supposed to be there, but I wasn't, and I haven't talked to those representatives since, and if that is the case I believe that is rock bottom."

Q Is this what you are telling Mr. Stephenson?

A That is what I was telling Mr. Stephenson; and I says, "I have heard that there is one of the companies, there are rumors that they are offering to go a dime an hour," and I says, "Conceding if they go to a dime an hour and we drop to 12-1/2 cents, we would be fighting over 2-1/2 cents." He said, "Well, I think you have got it figured about right." But I did tell him that I figured that 15 cents would settle — that the people hadn't had a raise in eighteen months, and that they would [477] settle for 15 cents.

Q Following this exchange of telegrams between yourself and Mr. Stephenson which constitute General Counsel's Exhibit No. 21, was another negotiating meeting held then of the full bargaining committees with the company negotiators?

A On December 18th there was.

Q All right. Now, Mr. Wingate, who was present at that December 18th meeting from the company?

A Mr. Bowden, Mr. Stephenson, and Mr. Marvin Walker.

Q And what is his position?

A He is the General Manager of Florida Citrus Canners.

Q All right. Anyone else?

A That is all that I recall at the moment.

Q All right. Now who were present on behalf of the union?

A At the beginning of the meeting it was myself, the full negotiating committee of the membership, in addition to Joe Morgan and Tom Owens, Joe Morgan being International Representative, and so was Tom Owens.

Q When and where was this meeting held on December 18th?

A The Walesbilt Hotel, on the mezzanine floor.

Q And what time did the meeting commence; 11 o'clock, as —

A Eleven —

Q Although the telegram confirms 10 o'clock, is that correct?

A 10 o'clock is the — We have it 10 o'clock. As I recall it, the company representatives came in just a few minutes late.

[478] Q Describe to the best of your ability, Mr. Wingate, review for us and relate how the meeting progressed, what occurred at that meeting?

A Well, when the company came in and took its seat at their table I asked Mr. Bowden if they were ready to proceed, and he said, I believe, "Any time you are." And I says, "Well, what is the deal on our last proposal we presented to you?" And he said, "Well, before we get into that," he says, "Mr. Walker is here, and he is the General Man-

ager, and you know we have had a disastrous freeze in the last few days, and he wants to talk to the committee in relation to that freeze." And I said, "Well, well and good, but what is wrong with the proposal? I would like to know that. I mean, is your company agreeable with it or not?" And he said that after looking through it the parties seemed to be farther apart than they had ever been in previous negotiations. And I noticed as they filed in that morning that Mr. Bowden didn't take out his usual paraphernalia that he uses, his notes and pads and so forth, and place them, and that is why I was wondering whether they were going to negotiate, or just exactly what was going to happen, and I asked in what respect this proposal that we had presented here was so different and everything from anything that we had ever negotiated or agreed on or talked about.

He mentioned, I believe, well, the Military clause; the Arbitration clause is another clause, and maybe he mentioned — [479] He mentioned one more. "Mr. Bowden," I said, "what is wrong with that?" Mr. Bowden says, "We don't want to go into that now." He says, "Mr. Walker is here, he has got something he wants to set forth for you." And I asked, if it be in order, that I would like to make a statement.

But before I did this, when Mr. Bowden made the reference he did to the proposal, and how bad it was, and how far off from our past negotiations, I turned to Mr. Stephenson and I says, "Mr. Stephenson, does that reflect your course of thinking, too, on this proposal?" He nodded his head.

TRIAL EXAMINER:
Which way?

THE WITNESS:
Well, up and down; and then it struck me that that was a far cry from the conversation that I had had with Mr. Stephenson in regard to the proposal, when he indicated that it was so near to what he thought we had agreed on over the past negotiations; and I said that I would like first, if I could, to make a statement to the company committee and Mr. Walker regarding the position of the union in the matter, and I was told to go ahead.

I reminded them that the union had been in negotiations for some eight or nine months with Florida Citrus Canners, trying to reach an agreement. I reminded them that we had retreated from our original proposal more than half way in accepting things that they had offered, and I said, "I realize there is going to be a freeze, but I also realize that the [480] people have been working approximately six or eight weeks now without a contract, and they are disturbed and they want a contract, and they hadn't pressed up until a few days ago," and there was no alibi on the part of the company then for not dealing with us, so we didn't feel like accepting the freeze as a further excuse for the company to stall these negotiations any further; that I realized that the severe freeze was going to have an effect on the company as well as on the people, although the company, if their production was curtailed by 50 per cent., their products were skyrocketing, the price had went up tremendously even since the freeze, and the employes, on the other hand, his employes, were faced with a short working season, and that they are not in a po-

sition to make up what they were going to lose except from a raise in wages, and that the company would realize more per man hour from each of the employees, due to the higher price of the product, than they would have had there not been a freeze; that I didn't think the freeze was such a bogey man as everybody had described it to be, and I figured that the prices of the product was going up further and further, which they did, and I told him that we wanted to consummate this bargaining agreement, and that if we didn't the people were in a mood for a contract, and they were not in a mood for any further stalling on negotiation, that ample time had been spent on that, and that unless we reached some type of agreement or got some [481] indication that we were getting cooperation on reaching an agreement by four o'clock that afternoon, that we would just have to take any course that we seen fit to try to enforce, force the company to bargain with us in good faith.

Mr. Bowden says, "You mean that you are threatening — " He says, "You mean that you will strike?" I said, "That is a possibility." And he said, "Well, that don't scare the company one bit." He said, "As I have told you in these negotiations once before, I think it would be good to let the people strike and get it out of their system."

Then he asked Mr. Walker did he want to make his statement now, and Mr. Walker said, "Due to the threatening statements made by Mr. Wingate, I have nothing to say. I don't react very well to threats, and them catching us right here in a time of catastrophe" — I don't know if that is the word he used, but "in trying to put the pressure on us right here when we have got this freeze to contend with" I said, "Mr. Walker, that is not a threat. We don't

want a strike, we want to settle this agreement, these wage issues, peacably, and we will do everything in our power to do so. We certainly don't want to strike." And he said, well, as far as he was concerned he had nothing to say, and the meeting was over.

Q (By Mrs. Fassig) What happened then?

A The company and the union both got up and left the room. When Mr. Walker announced as far as he was concerned that [482] meeting was over, they started getting ready to go, and we got up and walked out of the room.

* * * *

[483] Q Now then, Mr. Wingate, I am handing you what will be General Counsel's Exhibits 23-A and 23-B, and ask you with regard to 23-A, which appears to be a letter dated January 4, 1958, addressed to the union by the company, if you received that letter from the company?

A We did.

Q I will ask you whether or not you received the two pages which are attached to it, and which are marked for identification General Counsel's Exhibit 23-B, — if those two pages were received with the company's letter dated January 4, 1958?

A They were.

* * * *

[485] Q Mr. Wingate, after you received this letter from the company dated January 4, 1958, with the enclosed proposed wage scale, did you contact the company in any way?

A I called Mr. Stephenson by phone.

Q Do you recall what day it was?

A I am not — I can't recollect the exact date.

Q What was the conversation between yourself and Mr. Stephenson?

A I told Mr. Stephenson that I had received what appeared to be a wage offer, and that part of it had been left out; [486] I supposed that it was through error that there was no contract accompanying the wage rate and I wanted to know if it was through error, and if it was I would go over and pick it up. He said, no, there was no contract that was intended to go with it. I said, "I am mighty puzzled about that, I have never heard of this kind of dealing before. You mean you are offering this without a contract of any description?" He said, "That is right, we have no contract to offer."

Q Did you question him any further about it?

A No, I just determined — After I had determined that they hadn't intended to send a contract I asked him — the first thing I asked him was, was that supposed to go with the last proposal contract that we had made to them? That was what I thought might have been intended, and that was why I only got the wage schedule, but he said no, there was no contract with it, and there wasn't intended to be one sent with it or attached to it.

Q All right. Was there any discussion between you and Mr. Stephenson concerning whether the Company's proposed wage scale would be submitted to the membership?

A Oh, certainly. I told him, I says, "Steve, the people aren't going to go for anything like this, I don't think." He said, "You are going to submit it to them, aren't you?" I said, "I certainly will submit it to them," I says, "but it is not me, it is an individual wanting a contract with your [487] company. Your people are disturbed, and they

are the ones who want a contract. They are not going to accept a thing like this without a contract, I am almost positive, although I will carry it to them and let them voice their own opinions of it and take action on it."

Q When was the company's proposal submitted to the union membership, if you recall the date?

A It seems as if it was January 14th. I couldn't be certain, I could be wrong about the date. It was a regular meeting.

TRIAL EXAMINER:

How long before the strike?

THE WITNESS:

Approximately a week.

TRIAL EXAMINER:

Do you know when the strike was?

MRS. FASSIG:

I will establish the date by the next question.

TRIAL EXAMINER:

Go ahead.

Q Mr. Wingate, I am handing you what will be General Counsel's Exhibit 24 for identification, and ask you if that is a copy of a letter which you addressed to Mr. Stephenson?

A That is correct.

Q On the date it bears, January 10th?

A Yes, ma'am.

(Thereupon the document above referred to was marked General Counsel's Exhibit No. 24 for identification.)

Q And from a perusal of that letter can you now tell us [488] when the Local membership was notified of the company's offer?

A January 9th.

MRS. FASSIG:

At this time I will offer in evidence General Counsel's Exhibit No. 24.

TRIAL EXAMINER:

Any objection?

MR. BOWDEN:

No.

TRIAL EXAMINER:

It will be received.

(The document heretofore marked General Counsel's Exhibit No. 24 for identification was received in evidence.)

MRS. FASSIG:

Mr. Bowden, may it be stipulated that General Counsel's Exhibit 25 is a letter which the company posted to its employes on or about the date which it bears, January 16, 1958?

MR. BOWDEN:
That is right. That is Exhibit 25?

MRS. FASSIG:
Yes.

TRIAL EXAMINER:
The stipulation is received.
Are you offering the exhibit?

MRS. FASSIG:
Yes. I will now offer General Counsel's Exhibit 25.

TRIAL EXAMINER:
Is there any objection?

MR. BOWDEN:
No objection.

TRIAL EXAMINER:
It will be received.

(Thereupon the document above referred to was received in evidence and marked General Counsel's Exhibit No. 25.)

Q Mr. Wingate, will you tell us briefly what the action of [489] the union membership was when you reported to them at the January 9th meeting what the company's proposal had been?
A Their reaction to it, you mean?
Q Yes.

A Well, I presented it to them and explained what it was, and that I had asked about a contract to go with it and was assured there wasn't any, and that it was there for their pleasure, to accept or reject; and after several remarks was made about it a vote was taken on it, and they unanimously rejected accepting that wage proposal without a contract.

Q Was there any particular discussion by the membership at large regarding the absence of a contract offer from the company?

* * * *

[492] Q Mr. Wingate, when was the decision made that the employes would actually go on strike?

[493] A The decision was made by the negotiating committee, which had been empowered by the body to strike if and when in their opinion it was necessary to force the company to bargain with them in good faith.

Q When was that decision reached by the members of the bargaining committee?

A Approximately a week after this last exhibit, I can't recall the number.

TRIAL EXAMINER:

25. Pardon, which last exhibit?

THE WITNESS:

The one referring to the letter that I wrote to Mr. Stephenson.

TRIAL EXAMINER:

24.

Q Yes, your January 10th letter to Mr. Stephenson?

A That is right.

Q Did you receive any reply whatsoever to that letter from Mr. Stephenson?

A We received no reply of any kind from Mr. Stephenson regarding that letter.

Q Mr. Wingate, I hand you what will be General Counsel's Exhibit 26-A, and will ask you if that is a copy of a telegram which you sent to Mr. Stephenson on January 18th?

A It is.

Q Seeking a meeting?

A It is.

Q I will ask if General Counsel's Exhibit 26-B is a telegram [494] which you received in reply from Mr. Stephenson, the telegram being dated January 20th?

A That is correct.

Q I will ask if General Counsel's Exhibit 26-C is a copy of another telegram which you sent to Mr. Stephenson on January 20th?

A That is correct.

Q Following the receipt of his telegram which is 26-B?

A That is correct.

Q I will ask if General Counsel's Exhibit 26-D is the telegraphic reply which you received from Mr. Stephenson to your telegram which is General Counsel's Exhibit 26-C?

A That is correct.

Q I will ask you if General Counsel's Exhibit 26-E is a copy of a telegram which you sent to Mr. Stephenson on January 22nd, replying to his telegram of January 21st?

A That is correct.

Q I will ask you if General Counsel's Exhibit 26-F is another telegram which you received from Mr. Stephenson, the telegram being dated January 23rd?

A That is correct.

Q On the same subject matter of a meeting date?

A That is right.

Q And is General Counsel's Exhibit 26-G a copy of a telegram from you to Mr. Stephenson dated January 23rd?

[495] A That is right.

MRS. FASSIG:

At this time I will offer General Counsel's Exhibits 26-A through 26-G.

TRIAL EXAMINER:

Any objection?

MR. BOWDEN:

No objection.

TRIAL EXAMINER:

They will be received.

(Thereupon the documents above referred to were received in evidence and marked General Counsel's Exhibits 26-A through 26-G.)

Q In summary, then, Mr. Wingate, are the telegrams which have been received as General Counsel's Exhibits 26-A through 26-G an exchange of telegrams between

you and Mr. Stephenson which resulted in another negotiating meeting between the union and the company?

A Yes, ma'am.

Q And when was that meeting held?

A January 28th.

Q And where was that meeting held?

A At the Walesbilt Hotel, on the mezzanine floor.

Q And who all represented the company at this meeting on January 28th?

A Mr. Bowden, Mr. Stephenson, and I believe that was all.

Q Mr. Bowden and Mr. Stephenson at that meeting?

A Yes, they were the committee.

Q And who was there representing the union?

A Myself, Joe Morgan, Tom Owens and the membership committee, [496] negotiating committee.

Q Will you give us your recollection of what occurred at that meeting on January 28th?

A Yes. We went in, and as we took our seats in the conference room, eventually — well, shortly thereafter Mr. Bowden and Mr. Stephenson showed up, and I asked Mr. Morgan whether he wanted to act as spokesman. He was down here, and concerned because of the fact that the people were out on strike, and he was trying to see if there was anything he could do to settle the strike, and I asked him would he like to act as spokesman in that meeting, that I had tried everything I knew to reach an agreement, maybe he could do a better job than I was doing; and he said yes, he would act as spokesman.

And we sat down, and finally, after some few minutes, he asked Mr. Bowden were they ready to proceed, and he said they had been ready — Mr. Bowden said they had

been ready since 11 o'clock. Mr. Morgan then says, "Well. what is wrong with our last proposal?" Mr. Bowden says, "Look at your notes and find out what is wrong with your last proposal." He says, "Well, what has the company got to offer at this time?" He says, "The company has nothing to offer." And he made reference to the proposal that had been tendered to the company by myself, and said that it was so changed from anything that had ever been negotiated that he didn't want to get into it.

So Morgan says, "Let's take your proposal, then, and start [497] from scratch. Let's get an agreement here, and get this strike over with." So they took the company proposal and started down it article by article, and Mr. Morgan agreed on several things that was in the company's proposal that had not been agreed on before, and when it came time we had a lunch break and went back, and at about 4:30 o'clock Mr. Bowden announced that the company representatives had some meeting or something down at the plant, they needed to knock it off at 4:30. We broke up at 4:30, and they asked, "Well, what about another meeting?" and Mr. Bowden said, "We are in no position to name another meeting at this time." He says, "We are not going to set another meeting."

* * * *

[509] CROSS EXAMINATION

Q (By Mr. Bowden) Mr. Wingate, how long have you been with the Teamsters organization?

A Since March 1956.

Q What union were you previously associated with?

A A. F. of L.

Q Is that what we know as the Citrus Workers Union?

A That is correct.

Q And how long were you with them?

A Since 1952.

Q And in connection with your association with the Citrus Workers did you have occasion to be in contact with Florida Citrus Canners Co-op?

A I did.

Q For how many years was that, Mr. Wingate?

A Since 1952.

Q And what was your position with the Citrus Workers?

A Business Agent.

* * * *

[546] TRIAL EXAMINER:

You had nothing to do with setting up the September 19 meeting?

[547] THE WITNESS:

No sir.

Q Before the next meeting that you attended, which was September 19, did you go over with Mr. Roberts what had transpired at the meetings that you had missed?

A No sir, I did not. I didn't have the opportunity to do that.

Q Now, that September 19 meeting was the first meeting that you handled without Mr. Roberts being present also, isn't that so?

A That is right.

Q For the record, what town did Mr. Roberts move to when he left the negotiations here?

A Orlando, I believe.

Q And approximately how far is Orlando from Lake Wales?

A Some, about 50 miles.

Q As a matter of fact, did you ever see Mr. Roberts down in Auburndale, where you live, at the Minute Maid plant there?

A No sir, I never seen him down at the plant.

Q Have you ever seen him in Auburndale since he left here?

A Yes, I have seen him drive by the office, the Union office.

Q Did you ever go to either Orlando or Auburndale to talk to Mr. Roberts about the negotiations which had been conducted in your absence, prior to the time that he had left the scene?

A I do recall that I talked to Mr. Roberts and asked him where the notes were that he had on the previous meetings that [548] had been held.

TRIAL EXAMINER:

Where did you see him?

THE WITNESS:

I saw him in Auburndale. He told me that he had left them in the office. I thoroughly searched the office, and I never could find those notes.

TRIAL EXAMINER:

Did you ask him about it later?

THE WITNESS:

Yes sir, I called him on the phone. He didn't leave for Orlando immediately after he had went with the company.

Q I would like to have it identified. It is not this company he went with that you are thinking of.

A No, the Minute Maid company.

TRIAL EXAMINER:

I think the record already shows that; I am not sure.

MR. BOWDEN:

When he said with the company, I wanted to be sure it was understood that it was not with this company.

A (Continued) And he told me that he left them there in the office, and if they were not in there he didn't know where they were.

Q Did you ever make an attempt to take the company's proposal to Mr. Roberts and get him to go over with you the result of the bargaining during the time that he was in charge of the bargaining?

A No sir, I never did.

* * * *

[550] Q (By Mr. Bowden) Do you recall how this meeting of September 19 was set up?

A No sir, I do not.

Q Mr. Roberts, is that your recollection, set up this meeting himself?

A I believe he did, yes.

Q And what time did that meeting start and where was it held?

A It was held in the Walesbilt Hotel, and started at — [551] Mr. Examiner, I have some notes here, Mr. Bowden referred to a while ago, as long as they were my notes; I have some notes of another party that was taken, our recording secretary of the local union who sat in on these negotiations, and I asked her to take notes and assist me in taking notes, and if there is no objection I would sort of refresh my memory from those.

MR. BOWDEN:
There is an objection to his using someone else's notes.

TRIAL EXAMINER:
I sustain the objection.

MR. BOWDEN:
He is reviewing them now.

TRIAL EXAMINER:
Don't refer to them.

THE WITNESS:
I am not reviewing them.

TRIAL EXAMINER:
If you didn't make them, don't refer to them.
Q Do you recall who was present at that meeting?

TRIAL EXAMINER:
As I recall, as further reason I think, for not referring to those notes, he testified on Direct examination without referring to them. Go ahead.

A I believe that our full committee was at that meeting.

Q Were the members of the Joint Committee there at that time?

A I don't know what you mean by Joint Committee, Mr. Bowden.

TRIAL EXAMINER:

He means Joint Council. Do you mean Joint Council?

MR. BOWDEN:

Yes, a committee of the Joint Council, it is [552] my understanding, is the way they refer to these outside employees who come in to sit with them.

THE WITNESS:

I don't have any — in fact, that never happened.

Q What happened at this meeting of September 19, then, Mr. Wingate?

A I requested Mr. Bowden, as the meeting opened, that I was somewhat handicapped because of the fact that I did not have the benefit of Mr. Roberts notes, which had been made in the previous negotiations, and that I was willing to honor all the agreements that had been made in the past, but I had to be clarified as much as possible on what those agreements were; and we spent some time going through and checking on what was purported to be agreements that had been reached up until that time.

Q Did you have any reason to question the accuracy of the agreements as they were given to you that day?

A Of course, I conferred back with the meeting, to ask them did it meet with their recollection of what the agree-

ments were, and it was pretty generally agreed that that was in essence correct.

Q My point awhile ago was this, Mr. Wingate. That other than what you were told by a company representative at this meeting of September 19, and your recollection, that is all the information you had on all the prior bargaining, is that [553] correct?

A Except as I have noted here in the past few minutes.

Q Yes, I understand. Now was this the meeting where we got into a discussion in reference to the old Citrus Workers contract?

A Yes, sir. I requested, after we had went through and reviewed the alleged agreements that had been reached on the company's proposal, that we use the union proposal and work on it and negotiate from it, because there were some things in there that wasn't even mentioned in the company's proposal; and we did discuss it very shortly, and then you, as I recall, made the suggestion that we take the old A. F. of L. agreement, since we had got bogged down on agreements and so forth, take the old A. F. of L. agreement and indicate which of those articles in that agreement we agreed to, and to delete those we didn't agree to, and make whatever additions to that agreement that wasn't covered. And I recessed with the committee and asked their opinion on it, as to doing that, and I told them that I felt that that would possibly expedite the negotiations, although some of the clauses in that old agreement referred to some of the same grounds that had been covered, but was somewhat different; and the committee agreed that if that meant that the company was making that old agreement as a proposal that we would go along with it, but certainly it was not in accord with

going in and negotiating [554] all of those articles which were included in the old agreement.

Q As a matter of fact, didn't the company propose at that meeting to take the old contract and we would negotiate wage rates as a contract with the Teamsters?

A No sir, I don't recall that.

Q You don't recall that conversation about the old Citrus Workers Contract and wage rates being negotiated at this session?

A I certainly don't.

Q What was it, then, I said about the Citrus Workers contract?

A Exactly what I said. I just stated that we should take it and screen it, and take the parts that we were in agreement with and delete other parts, and make any additions we wanted, and make it as a new proposal.

Q And was it not at that time understood that the parts of the old Citrus Workers agreement that you did not change or that were not changed would be acceptable to the company?

A That is correct, yes.

Q So whether or not you had an agreement on the old Citrus Workers contract depended on what you and your committee did to the Citrus Workers contract, didn't it?

A That is correct. The company stated that they were willing to go along with any articles in that old contract.

Q As a matter of fact, didn't they do that in the negotiations, [555] go along with the old Citrus Workers contract?

A No sir, I don't recall that they adhered to that old contract, as your proposal will reflect.

Q What proposal did we make after this discussion on the Citrus Workers contract?

A That we go through it and designate which parts of it that we would take and agree to.

Q All right. I mean, though, this: Did the company make any proposal to you, contract proposal, after we offered to take the old Citrus Workers contract, either in full or whatever sections you wanted to remain the same, and negotiate on the changes? Did we make any further proposals to you in reference to a contract after that time?

A After the committee recessed on that day I came back and established the fact that you had not made it clear previously, you had just merely inquired as if we were to do that, but you had not committed that you were in agreement with that old contract, and I came back and asked the question that we were willing to go along and try to expedite negotiations, if the company maintained that they were agreeable to the clauses in the old contract?

Q Well, what did we say?

A You said you were.

Q Now, do you know what time that meeting adjourned, and at whose request it was adjourned?

[556] A I believe, if my memory is correct, that in order to — Since this agreement had been made, to take the prior contract and go over it, it was going to call for the drafting of a new proposal, and it seems that we adjourned a little earlier than usual on that date.

Q As a matter of fact, it was about 1:45, wasn't it, in the afternoon?

A I couldn't swear it was 1:45. I know it was a little bit earlier than usual.

Q At that time did we set the next meeting?

A No. I informed the company at that time that due to the work that we needed to do on that contract, and

because of the fact that I had been elected to attend two conventions in Miami, it would be after the first of October before we could be able to meet again.

Q Did we set a meeting for October 9 at that time?

A Yes, as I recall it, we did.

Q Did we meet then on October 9?

A My memory is that we met on October 10.

Q Well, are you saying that you did, or you just think it was? Which is it?

A I know that there was a time during the negotiations when you were unable to make it on that day and we agreed to put it off a day, and I think that is the time that we met on the 10th rather than on the 9th.

[557] Q Mr. Wingate, as a matter of fact, we met on October 9th at 10 o'clock like we agreed to, did we not?

A Yes, I believe — I believe we did, yes.

Q All right. Who was present at that meeting?

A For the Union?

Q Yes.

A For the Union, I was present as negotiator, Mr. McLean, Mrs. Blair, Theodore Hall, and Mr. Brooker I believe was there. I am not positive of him.

Q And do you know whether Burgess and Beasley were there?

A Yes, I believe they were.

Q You are not positive?

A Yes, I recall that they were.

Q Do you recall now that Brooker was not at that meeting?

A Not definitely, no.

Q What happened at that meeting, Mr. Wingate?

A We took the revised or the new proposal that had been drawn according to your suggestion, and went through

that proposal, and I think the company generally took exceptions to the changes that we had made, where it pertained to articles, I believe in Article II, I think the language in there they agreed to it, but other than that the sections we left out they took exceptions to, and that was the basis on which we negotiated that day, is the articles or sections of articles which had been left out.

[558] Q How many copies of that proposal did you give us that morning?

A It seems like it was three copies.

Q As a matter of fact, didn't you show up with an original and one copy, and you gave us the copy and you kept the original?

A Well, that is correct, because I recall that that proposal was drawn up in my absence at the convention, and that I informed you of that, and that I had not had time to check it in detail since I had got back, but I think it was pretty generally what our decision was, but if there were errors in it that we would correct those errors as we went through. And you said you understood that, that was all right.

Q As a matter of fact, didn't we duplicate that proposal for you at noontime so your committee could have copies of it?

A Yes, as I recall, you did.

Q Which of those two proposals which you have introduced there, or which have been introduced, rather, as General Counsel's Exhibits 18 and 19, was it that you gave to us on October 9th?

A As well as I could reconstruct it, it is General Counsel's Exhibit 18.

Q Well, what do you base that on, Mr. Wingate?

A On the fact —

TRIAL EXAMINER:
Do you want him to have it before him?

[559] MR. BOWDEN:
Yes, I would like for him to look at it.

(General Counsel's Exhibit 18 handed witness.)

A Well, the fact that during the October 9th meeting certain things were agreed to that show up in General Counsel's Exhibit 19 that are not evident in General Counsel's Exhibit 18.

Q And when did you furnish the company copies of your General Counsel's Exhibit 19?

A At the October 14th meeting, or October 22nd, which was merely change in pages.

Q And who did you give that to?

A I gave it to you.

* * * *

[594] Q Now, on that proposal I wonder if you would get it? That would be General Counsel's Exhibit 20.

(The exhibit handed Mr. Bowden)

Q (Continued) In reference to this proposal, would you tell us how long you were in this meeting with Mr. Stephenson?

A Approximately an hour and a quarter.

Q During that period of time did you go completely over the proposals with him?

A We did.

Q Referring you to General Counsel's Exhibit 20, which I understand to be the proposal which you were discussing with him — is that correct?

A Yes, this is the proposal.

Q I will ask you again what your discussion was with him [595] at that time on these various articles, starting with the preamble?

A Mr. Stephenson told me that he found a few things in this agreement that he wanted to talk with me about figuring towards changing those particular articles.

Q Starting, if you will, with the preamble, I believe you discussed each one of those in your direct testimony, as to what happened with reference to those proposals as your meeting with him progressed.

A Yes. Mr. Stephenson didn't take any issue with the preamble. Now the thing that we were going through this for was the things that Mr. Stephenson wanted to talk, that he thought needed changing or that the company would like to have changed, although he said it didn't mean that the company would not agree to it like it was, but he wanted to talk to me and see what my thoughts were about changing these different phrases and so forth in some of these articles.

Q Well, in reference to the preamble, what was the discussion, if any, on that?

A Well, Mr. Stephenson was doing the leading, and he was going down the contract. He took no exception to the preamble.

Q Let me ask you before that, isn't it a fact that that had been agreed to on October 9th?

A There had been a — There was some controversy, I think, or that we had been in negotiations as to whether

the company [596] had agreed to that word "affiliated" appearing in the preamble or not.

Q Will, as a matter of fact the company had agreed to that on May 21st and again on October 9th, had they not?

A At least they had voiced no objection to it.

Q All right, sir. Then go to "Witnesseth," if you will.

A All right. Mr. Stephenson changed here, he wanted to change the "hours of labor" to "wages and hours." He said that "hours of labor" was not very clear, or something to that effect, and he wanted to know what we thought about changing that "hours of labor."

Q You will recall, or do you, that that was previously agreed to on October 9th?

A Yes, it was.

Q How about Article I?

A That was also in agreement.

Q How about Article II?

A Article II I don't recall was agreed to on October 9th.

MRS. FASSIG:

May I have the pending question read?

TRIAL EXAMINER:

"How about Article II?" I think.

MRS. FASSIG:

Well, was it relating to what the conversation was between him and Stephenson, or whether it had been agreed to on October 9th?

(Testimony read beginning "Q You will recall, or do you," to and including last answer.)

[597] Q You don't recall that that was one of the provisions that you had put "o.k. except to add the unit" in your proposal to me on October 9?

A That is very possible, Mr. Bowden. There are certain sections in here though, that were not agreed to.

Q Well, did Mr. Stephenson want any change made in that clause?

A No sir, he didn't ask for any change in that clause. He asked that section D in that clause be moved to another part of the contract, grievance procedure.

Q That B would be moved?

A No sir, D.

Q That D. How about B? This would be Article II, B of that.

A He raised no objections to Article II B.

Q That had been agreed to on October 9 also, had it not?

A I believe that is right, yes.

Q Now, in reference to paragraph C of Article II.

A That is language from the old AF of L agreement.

Q That had been agreed to also, hadn't it, on October 9?

A Yes, that was one of the —

Q Now in reference to little (d) of Article II, what happened there?

A Mr. Stephenson said that he didn't see anything wrong with that, but he felt like instead of being in Article II [598] under Recognition, it should be moved to the Grievance Procedure.

Q What happened to the (d) that was formerly there?

A The old (d) was of course — it wasn't put in here obviously. It is not there.

Q Well, hadn't we previously agreed on (d) in the old recognition clause?

A Yes sir, Mr. Bowden, I believe we agreed on that in one of the October meetings. I am not positive which one.

Q So you deleted that and put in a new section in place of that.

A Yes sir. If I am able to explain why I did it, this section (d) is much more what you said you wanted in your arguments than the one which we had previously agreed on. That had been agreed on with another company, and I put it in there to give you the benefit of the good that it would do in answering your objections to having business agents come on the property.

Q But we already had agreed on your other (d), even though we had some objection to it, is that correct?

A That is correct.

Q In reference to Article III (a), did Mr. Stephenson have any objection to that?

A No, he did not.

Q We had previously agreed to that on October 9, too, hadn't [599] we?

A That was part of the old agreement, yes.

Q Yes; the same being true of (b).

A That is correct.

Q The same being true of (c).

A That is correct. However, I would like to say here that that was left out of our new proposal based on the old contract in our first presentation to you, but it was

left out there, you see, through an error, and when our attention was called to it, we put it back in.

Q Yes, but I mean it was agreed to on October 9, along with the other provisions, and reinstated so far as the Union is concerned in that proposal, was it not?

A That is correct.

Q Now, Article IV (a), was there any discussion between you and Mr. Stephenson as to that?

A No sir, there was not.

Q That had been previously agreed to on October 9 also, had it not?

A Yes sir, I believe it had.

Q Now, (b) of Article IV, this is a new clause, is it not?

A It is reworded, yes.

Q Well, we had previously, on October 9, agreed to the old language with the exception of the hours involved, which we concluded were cost items, had we not?

[600] A Yes, it is substantially the same.

Q But it is not our agreement.

A It is not identical, but it is substantially the same, though.

Q In reference to (c) of Article IV, what discussion, if any, did you have with Mr. Stephenson about that?

A I didn't have any discussion with him on that.

Q This is not the language as appeared in the Citrus Workers contract that we have been referring to, is it?

A It may be. It is so similar to it. It may be a little different. I know the five hours is different.

Q That is what I mean, you know the hours are changed if the language isn't.

A Yes.

Q Did you all discuss that, you and Mr. Stephenson?

A No, we did not.

Q Well, that was something that had not been agreed on as it was written, isn't that true?

A Yes, that is right.

Q Article V, Holidays, that was a new section that you put in, was it not?

A Yes, this was one of the additions to the old proposal that we put in our new proposal, except that we cut the number of holidays from six to two.

Q Yes, but you don't mean to say that this is the proposal [601] of the old Citrus Workers contract.

A No.

Q This just appeared in your proposal of October 9, did it not?

A Yes, it did.

Q And you had scaled it down in what respect?

A Scaled it down to delete four holidays that we had previously been asking pay for, to be paid holidays rather.

Q And in section 2, wasn't Sunday added to that?

A You mean when this agreement was drawn up?

Q Yes.

A It may have been. The old agreement provided that all work done on Sundays, though, would be paid for at time and a half.

Q In reference to Sections 3 and 4, did you have any discussion with Mr. Stephenson on those two sections?

A No, Mr. Bowden. I will say again that we only discussed the portions that Mr. Stephenson indicated that he thought needed some changes.

Q Am I to understand that it is your inference, we will say, that he was agreeable to this article V?

A With one exception. He said that he thought that the company could go along with one holiday rather than the

two that we had dropped it down to, and that was Christmas Day.

Q How about Section 2, in reference to the extra pay on [602] Sundays and those other days?

A There was no objection to that.

Q Is it your testimony that that was satisfactory to him?

A That was what I was led to believe. The only things that were not satisfactory to him were the ones that he was going to bring up and talk to me about.

TRIAL EXAMINER:

Well, actually you didn't discuss Section 2?

THE WITNESS:

No sir, we went down and discussed the — no sir.

Q (By Mr. Bowden) In reference to Article VI on that page, did you discuss anything with him there?

A No sir. There was agreement that that had formerly been reached.

Q That was on October 9th, was it not, both of those?

A Most of those I think was on October 9, yes.

Q With reference to Article VII, what was your conversation with Mr. Stephenson?

A Down in Section 3 of Article VII Mr. Stephenson thought that the wording ought to be changed or some additional wording put in that section to clarify it.

Q What words, did he suggest?

A That the senior employees applying for a job vacancy should make it known in writing, and provided they can perform the work.

[603] Q With reference to Section 2 of that Article VII, was there any conversation in reference to that section?

A No, there was not.

Q I will ask you if that is not changed from the agreement which had been previously made on that same article?

A As I recall it, the agreement that we made on that article is reflected in this, because I remember when we referred to sickness or injury Mr. Stephenson himself brought up, "what about the people on leaves of absence that may be off?" And we added that.

Q Well, did you leave any other words within that section 2 (a) of Article VII?

A It is possible. I would have to check the agreement with this again to be positive.

Q In reference to (b) of Section 2, Article VII, are those the words that had been agreed to, or are parts of that left out in this proposal?

A These are the words that we had agreed to.

Q You don't recall —

A The structure of this article is somewhat different from the way it appears in the other contract. This section (b) refers exactly to a provision that we had previously agreed to put in, to tie into Section 1, which would require that the employee be qualified to perform the work before he could exercise his seniority on recall.

[604] Q Well, is that in there, is that in this?

A It is in Section 1, yes.

Q I mean, the words under (b) do not read as had been agreed to, "subject to the provisions of Section 1 of this article"?

A Well, if there is a difference it is slight, and I cannot recall it without making comparison.

Q I believe you previously mentioned this Section 3, which you say has been changed.

A Yes, the one that Mr. Stephenson wanted changed.

Q All right. How about Section 4 of that Article VII?

A He found no — he voiced no objections to that. We went to the next article, then, that he said he felt ought to be changed.

Q Well, as a matter of fact, Section 4 of Article VII had been agreed to on October 14, hadn't it?

A Probably, the majority of this language was language which had been agreed to on previous negotiations, Mr. Bowden.

Q I understand that; and some has been changed that we will point out had been previously agreed to in the negotiations, had it not?

A In some instances, yes.

Q And what was your comment, in reference to Section 5 in Article VII?

A By reference? I didn't refer to that.

[605] Q As a matter of fact, that had been agreed to on October 14, too, had it not?

A That was in agreement.

Q How about section 6?

A Excuse me, I had to turn a page here; but Mr. Stephenson felt that this Section 5 ought to be Section 3 of this Article. I mean, it was out of place, it was too far down, and you have got in job bidding and all of that, but it is more or less tied in with the first part of the seniority clause of the article, and he suggested that that be made Section 3 rather than Section 5.

Q How about Section 6?

A There was no controversy over Section 6 whatsoever.

Q That was agreed to on October 9, too, was it not?

A I believe it was. It was agreed to on one of the October meetings.

Q How about Section 7?

A That is another Section that is repeated from the old AF of L agreement.

Q Well, that was agreed to on October 9, too, was it not?

A Yes, I am assuming that all the language that is verbatim with the old agreement was in agreement on October 9.

Q Would the same comment be true in reference to Section 8?

A No, that was not in the old agreement.

Q Did we bargain on that on October 9th?

[606] A I don't recall that we bargained on that particular issue. We may have.

Q Do you know whether we had an agreement on that issue or not?

A No, I don't have a firm conviction that we did have.

Q How about Section 9?

A Section 9 is the section where Mr. Stephenson wanted to add the word "regular" before "maintenance", in referring to maintenance employees being laid off.

Q Do you know whether there had been a previous agreement on that?

A In substance there had been a previous agreement on that.

Q It was a question, then, of just getting the language to suit everyone; the principle had been agreed upon?

A That is correct.

Q How about Section 10?

A Section 10 is an agreement that was reached in the October 22 or 31 meeting; that is where the company said that they did not object to the people having two separate shifts, providing that they would be allowed to retain a senior man

on the night crew for a week or two to train a new employee.

Q That again had been agreed to in principle, and there was a question of just putting it down, had it not?

A That is correct.

Q Article VIII, probationary employees. Did he have any [607] questions about that?

A Yes, he asked that maintenance men be required to work thirty days probationary period rather than fifteen days, which we had previously agreed on.

Q All right. Article IX, what was his feeling on that?

A He said he was not an attorney, but it looked all right to him, but he would have to check with his attorney before he would — if it was all right with the attorney that that would be accepted.

Q He didn't show you any new proposal at that time, or a proposal that would be acceptable?

A No, he didn't show me any proposal at that time.

Q In reference to Article X, what comment, if any, was made about that?

A He said he had no doubt that there would be a check-off, but I realized that that was a very good issue, and if we got together on all the rest of these changes, why, certainly then the company would give us a check-off.

Q Did he say they would give you this one?

A Not specifically this one.

Q Isn't that the same check-off that we have had discussions about on several occasions prior to this proposal?

A We had discussed this article on an occasion or two, but it was generally passed over real fast, because of the fact that it was, as Mr. Stephenson termed it, one of the last [608] sections the company would agree to.

Q With reference to Article XII, what comment did you have on that?

MRS. FASSIG:
Did you skip XI?

MR. BOWDEN:
I am on XI, I am sorry.

TRIAL EXAMINER:
You mean XI?

MR. BOWDEN:
Yes sir.

A He remarked that that would be a pretty severe cost on the company, with as many seasonal employees as they had, to agree to that clause, and wanted to know if we might not tone it down some.

Q What did you tell him?

A I told him, well, certainly I would talk to the committee and we would certainly see what we could come up with on that score.

Q Were you to make a proposal back on it?

A As soon as we got a meeting.

Q You mean of your committee?

A That is as soon as we got the committee together and ironed out these various little things that he said he wanted changed.

Q Well, as I understand it, in this discussion you were to take these thoughts back and discuss them with your committee, and see if you could work out a different or new proposal.

A No, not exactly, because Mr. Stephenson prefaced our

[609] conversation with the statement that this was not something that they were standing firm on, but it was just something that he wanted to talk to me on and to see if we might not get together and change these few minor things, as he termed it, in the contract.

Q Do you think that Vacation plan is a minor thing?

A Well, I suppose Mr. Stephenson was well aware that it was in the contract when he made this statement.

Q Well, what was supposed to happen on the Vacation? You were going to discuss it, and what was going to happen then?

A We were going to see what I — This meeting that I had, Mr. Bowden, with Mr. Stephenson — and he requested that my committee not be there nor his committee — this was a sort of a talk where we were going to, just man to man, see how far apart we were, and then, if we were close together, we would call in the committees, that was my idea, and thresh out these things that were at issue.

* * * *

[611] Q (By Mr. Bowden) Now, in Article XII, in which you have "adjustment of grievances" was there any comment about that?

A Yes sir.

Q What was that?

[612] A Mr. Stephenson asked about changing step number 1 to two days, where the prior agreement had been three days, and to insert "within two days from the time the employee becomes aware of the grievance".

Q Mr. Wingate, would that be normally a company proposal or a Union proposal?

A Well, I liked it myself.

Q Well, that is the Union proposal.

A I thought it was pretty good.

Q It is your testimony that Mr. Stephenson would take out language which confined a grievance to three days, and want to insert in place of it language that would conceivably leave grievances open for months, and you say that he proposed that in that meeting?

A That is what he did, that is what he suggested.

Q As a matter of fact, hadn't that whole article been agreed to on October 9?

A Yes, the grievance procedure had been agreed to even prior to October 9.

Q But it was last agreed to on October 9 with you, had it not been?

A That is correct.

Q With this exception: isn't that (d) in there a new proposal which you stuck in, that was not in the agreement of October 9?

[613] A That is language from the old contract.

Q (d)?

A Yes sir, I am pretty sure that is where that came from.

Q How about (f), arbitration?

A I want to — before we pass that I want to say that this paragraph (d) that you are speaking of Mr. Stephenson objected to it, and I said we would take it out and insert (d) of the recognition clause.

Q Was that acceptable?

A Yes sir, it was.

Q What were you supposed to do with that? You said that these things he had no objection to. How were you going to handle the mechanics of getting those into an agreement? Who was supposed to do what?

A Well, Mr. Bowden, they were such minor changes it

was not discussed which one would put them into an agreement. This was just a head to head session, to see how far apart the Union and the company were on an agreement as we had proposed it.

Q You were supposed to do certain things, were you not, afterwards?

A Well, the thing was that I asked for the meeting immediately, not to go back and revise that situation, but I asked that we immediately set up a meeting of the negotiating committees, since we were this close together, and get together [614] and iron the thing out, and I said immediately, I mean within the next day or two days or three days, just as quick as we could get together. I saw no point in going back and redrafting the agreement until such time as we had met with the committees there, since I thought it was going to be in the next couple of days.

Q All right. Passing now to paragraph (f) which is arbitration, hadn't we previously had agreement on June 4 on arbitration?

A Yes, that is correct.

Q To which this is a change.

A Yes.

Q What was the purpose of making the change in this arbitration clause?

A Mr. Bowden, we had about several negotiations going on at this time, as you are aware, and this is an arbitration clause that had been submitted and maybe agreed to in another company, and as soon as Mr. Stephenson called my attention to the fact that that had been changed in there I bracketed it and told him that we would take it out, that we certainly were not meaning to —

Q Did you ever withdraw it?

A I withdrew it right then.

Q Did you ever give us any other proposal on arbitration, or were you reverting then back to the June 4, 1957 agreement?

[615] A I was willing to take out this, because it was objectionable, and there hadn't been no previous agreement on it.

Q There had been a previous agreement reached on it.

A On this language there, as appears in here.

Q Yes, but I mean, there had been a previous arbitration clause agreed to.

A Yes.

Q What was the purpose, you say, in proposing this again?

A This was not proposed again, except through an error. This arbitration clause was taken from some other agreement that the secretary got her hands on, and as soon as we discovered it, we told Mr. Stephenson that we would certainly knock that out, although in my opinion it was just as good, but if it was not suitable to the company we would knock it out.

Q (By Trial Examiner) How much of it were you agreeing to knock out, beginning where?

A Beginning at —

Q Just begin the words.

A "After being impaneled the arbitrators shall remain —"

Q All right, down to where? The rest of it?

A No.

Q Down to what point?

A "in continuous session."

Q In the next line?

[616] A Yes sir, the continuous session is one of the major things that had not been agreed to.

Q How would it read, with the language deleted that you were agreeing to knock out?

A Well, the arbitrators would resolve the issue or dispute in question in 10 days, or in some length of time of that sort, give their findings and so forth. I meant this, sir, as a minute of what Mr. Stephenson had disagreed with, with the idea of accepting the other arbitration back into this agreement.

Q The most I can make out of this, what he objected to and what you agreed to delete, is this phrase "remain in continuous session", is that right?

A Yes sir, that is the only objection he made to this article.

Q That is what you were agreeing to delete, that phrase, "shall remain in continuous session", is that right?

A Yes sir.

Q All right.

A And he thought that we ought to limit the expense of the arbitrators in some manner, that there ought to be a limit put on the expense of the arbitrators.

Q (By Mr. Bowden) How was that to be done, Mr. Wingate?

A Well, that was not definitely decided, but I agreed with him we could set some kind of set up which would probably be [617] cheaper on all of us.

Q Wasn't that one of the issues there, too, the fact that you had left out that the arbitrator should be a resident of this state or a bordering state?

A That was not an issue at this meeting that I am testifying on now.

Q I mean that is another change from the agreement on June 4, 1957?

A It is a change, but it was not objected to in this meeting between Mr. Stephenson and me.

Q Didn't the old arbitration procedure also provide for a thirty day period to decide the issue, rather than the time set in this, of a continuous session?

A It did not provide that they would sit in continuous session in the agreement, no.

Q But didn't it provide they would have an award within 30 days?

A I believe that is correct. I believe that is the way it is.

Q So there were a number of things changed in this arbitration clause (f) as you proposed that here, which was different from the agreement on June 4?

A Well, I wouldn't say that there are several things, Mr. Bowden.

Q Passing on to Article XIII, what comment, if any, did Mr. Stephenson make on this?

[618] A He didn't make any comment whatsoever on this article.

Q Even though this was changed from our agreement on October 22, he never made any comment about it?

A No, he did not.

Q Isn't this a new article and different from our agreement on October 22?

A It is not exactly like the agreement we reached at the October meeting.

Q Why did you change this provision in this proposal, then, if we had an agreement on it already?

A Well, Mr. Bowden, in drawing up this proposal, in other words, except for the verbatim language that we used from the old contract, and absorbing the objections the company had and their reasons for not wanting this or that in

the contract, in drawing up this contract I took all those things into consideration and tried to give a proposal, and there would have been no objection had Mr. Stephenson raised an objection to it.

Q Where was there any dissension in this article, for instance, when we had already worked it out and had an agreement on it next to the last time that we had met previous to this proposal? Why had you thought that it should be changed?

A Well, I didn't think that it should be changed, Mr. Bowden. This is a shorter article, and it only gives the Union the right to post notices of the Union, and all the [619] objections the company raised about political propaganda and so forth being on the union bulletin board, it doesn't allow for that, but I frankly couldn't see where it would be objectionable to the company.

Q Well, we had had quite a discussion about this bulletin board at the time we reached an agreement on October 22nd, had we not?

A We discussed it, if that is the proper date.

Q And worked out our differences at that time in that language, didn't we?

A We did work out an agreement on that article.

TRIAL EXAMINER:

Did you yourself draw this proposal, General Counsel's Exhibit 20?

THE WITNESS:

Yes, sir; I, with the help of the office force.

Q Article XIV which you have proposed here, there had

never been an agreement on that, and this is a slightly changed version, is it not, from the last proposal?

A That is all that is left of the Protection of Rights clause, four lines.

Q What agreement, or what discussion did you have with Mr. Stephenson about that?

A He said that the company would go along with the first part of it, but didn't like the last clause in it, which said the company shall not request employees to go through a picket [620] line.

Q He said that he didn't like that, eh?

A That is correct.

Q Do you recall a conversation at the time we had previously discussed that, in reference to its application and the company's objection to it?

A I recall several things about the discussion of the Protection of Rights. I recall that the company had made inquiries of the Union committee what they thought about a clause like that that only worked on a local basis, rather than the national basis, and the unfair acts would just apply here in this local territory among the Citrus plants; and the company contended they hadn't ever forced an employee to go through the picket line of a Union in this discussion, and we all talked on this article.

Q Didn't we also tell you that we didn't want to be the insurors of the labor relations of everyone else in the area?

A You may have said that, Mr. Bowden. I don't know as I followed you and know exactly what you mean by that.

Q Well, didn't I tell you that as long as we had no disagreement with our employees, that we had the right to send them to work on their jobs?

A Well, Mr. Bowden, if I may point out this, this refers to if your employees are on strike then there will be a picket

line, but if they were not on strike there would not be any [621] picket line for them to have to cross.

TRIAL EXAMINER:

You are beginning to argue now as to what the clause relates to. On the face of it I am inclined to agree with Mr. Bowden. Read the question, please.

(Last question read)

A I don't recall that exact wording.

Q You don't recall the hours that we spent discussing that, Mr. Wingate?

A I remember the discussion of it, Mr. Bowden. I don't remember you saying those words.

Q Now, you say then, after that discussion — which you will admit was quiet extensive during the bargaining, was it not, on this protection of rights?

A Yes sir, and there was a lot more to it than is in this agreement.

Q You said at this meeting with Mr. Stephenson he said it looked all right to him, if you just took out that last paragraph.

A That is correct.

Q In Article XV did you have any discussion with Mr. Stephenson about that?

A Yes, we discussed that clause, and Mr. Stephenson said he didn't understand the last part of it. I told him that it came from the company's proposal, it was just the old AF of L contract and a part of your original proposal combined [622] here, and he still didn't like the last part of it, so I bracketed that out.

TRIAL EXAMINER:

Beginning "and rules and regulations"?

THE WITNESS:

Yes, sir.

Q What happened to the old Article XV that we had agreed on in our proposal of October 9th? You had substituted here a new article in its place, had you not?

A I don't recall exactly the article in the agreement you are speaking of now, so I couldn't give you a fair answer on that until I check.

Q All right, sir. In Article XVI, what was the feeling on that article?

A Mr. Stephenson didn't object to that article.

Q As a matter of fact, isn't this the second different proposal that we have had on this since we had an agreement on June 4th to an article on Absenteeism, Tardiness and Leave of Absence?

A I have no recollection that this Leave of Absence was agreed to on June 4th, Mr. Bowden. I do agree that this is much different from the last Leave of Absence article that we negotiated on.

Q Do you say there was not an agreement on this on June 4th?

A No, sir, because my notes reflect that even up as far as October 14th we were still negotiating on the Leave of Absence clause.

[623] Q As a matter of fact, that was the first or the second proposal we had on the same article, and this is the third one, is it not, after we had already agreed on the No. 1?

A No, I don't agree with that.

Q Well, do you say there was not an agreement on this on June 4th?

A I don't recall an agreement on June 4th.

Q How about Article XVII?

A That was the article that Mr. Stephenson said he wanted to do some further checking on before he committed himself.

Q What was to happen in this instance? Was he going to get in touch with you, or were you going to get in touch with him?

A Mr. Stephenson was going to get in touch with me as quickly as he got hold of you and could set up the meeting.

Q There was no agreement, then, on this, no discussion to any extent?

A There was somediscussion, but it was not extensive, and he said that was one thing he would like to check.

Q What did you mean on your direct when you said it looked like we had a contract? Isn't this a pretty important article?

A This is a pretty important article.

Q Isn't Vacation a pretty important article?

A Right.

Q And you were not about to get a contract, as you stated [624] on direct at all then, were you.

A With a little giving from each side, Mr. Bowden, we were right close to an agreement.

Q Isn't this proposal here the one that you referred to as your final offer?

A This was the proposal that was made up as a package, to try to get as close as we could to a package the company would accept.

Q Haven't you referred to this proposal thereafter, I think the time you delivered it, as your final offer?

A No, that was a later proposal, Mr. Bowden.

Q Which one was that?

A I think that was submitted on — I would have to check. It was submitted after —

Q You mean another written proposal?

A January 9th.

Q Are you talking about a written proposal?

A The final offer was this proposal referred to in a later communication.

Q You are talking about wages?

A No, I am not talking about wages. I am speaking of this agreement that was mentioned in that communication.

Q Well, what is your final offer on a contract proposal?

A What do you mean?

Q Which was your final offer on a contract proposal that you [625] mentioned, then? Is it this proposal or another proposal, or which proposal?

A Well, yes, Mr. Bowden, I may have used the words loosely, "final proposal", but if it had been final I certainly would not have been negotiating with Mr. Stephenson on it and agreeing to take out these things. It was not.

Q Have you not referred to it as final, without any change, since your conversation with Mr. Stephenson?

A I don't recall exactly how it was referred to in that connection, but with the proposal that you have in your possession, I don't know as it was then termed as a final proposal.

Q There has been no subsequent proposal from you to the company other than this Exhibit 20, has there?

A No sir, except a wage proposal.

TRIAL EXAMINER:

There has been no subsequent written contract proposal?

THE WITNESS:
No sir.

TRIAL EXAMINER:
In the sense that final is the last, it is the last proposal which you made?

THE WITNESS:
Yes sir, that is right.

* * * *

[626] Q (By Mr. Bowden)

* * * *

Q Passing on to Article XVIII, which is the Separability and Savings Clause, what was Mr. Stephenson's comment on that?

A Mr. Stephenson's objection to that clause, his comment was, he wanted to know if we would be willing to strike, starting with the final word of the fourth line from the bottom.

TRIAL EXAMINER:
The word "if"?

THE WITNESS:
"If", yes sir.

TRIAL EXAMINER:
You mean he wanted to strike the last sentence?

THE WITNESS:

That is correct, yes sir.

Q What did you tell him about that?

A I told him that we wasn't objectionable to striking that, if it would get us an agreement.

Q Well, hadn't you been insisting on that up through all the [627] negotiations, that last sentence? Hadn't we proposed that to you before?

A I believe that had been proposed before.

Q And up to that time the committee and you had not seen fit to strike that last sentence, isn't that correct?

A That is correct, but somebody has to give sometime, Mr. Bowden.

Q So did you in any subsequent negotiations ever indicate that you had given on that?

A We never had any subsequent negotiations, Mr. Bowden.

Q We didn't meet on December 18 and on January 28?

A We did.

Q Did you at either one of those meetings advise that you had given up that last sentence?

A I never got the opportunity to tell you that we had given up anything in this proposal.

Q Didn't we negotiate all day on January 28 on various proposals, various clauses?

A Not in this agreement, no sir.

Q Well, did you at any time during that day say —

A Mr. Bowden, this —

Q Wait a minute until I finish my question. Did you at that meeting at any time advise us that you had given up on this last sentence?

A No, I had no opportunity to do it.

[628] Q In Article XIX, in reference to uniforms, did Mr. Stephenson have any comment there?

A No, he had no objection to that.

Q That had been previously agreed to on October 31, had it not?

A That is correct.

Q How about Article XX, Discharge or Other Disciplinary Action?

A Mr. Stephenson wanted some words changed in that article there in Section (b). Speaking of the employer, the company should be referred to as "it" and "its" rather than "he" and "his".

Q That is the only thing, you say, that Mr. Stephenson objected to, just "it" and "its"?

A That is correct.

Q Now, this was a new proposal, Sections 1 (a) and (b) are both new are they not?

A Yes, that is right.

Q And this went into matters like written warning slips, inefficiencies and other matters, and he had no objection to any of these things, even though we had never discussed them before, is that correct?

A He had no objections to it.

Q The only thing he wanted changed was "it" and "its"?

A Yes sir.

[629] Q Now, sir, passing on to Article XXI, this is almost a new section, is it not?

A Well, there is some of the agreements that we had reached that are — it may have been a different section of the contract and was put in the last of this proposal as General Provisions. For instance, the 15 minute rest period in the mornings and afternoons, that we had agreed to.

Q How about number 4 of Article XXI? Hadn't we agreed on 6 hours there on October 22?

A Yes, we had.

Q Why was that changed, then, to 5 and a half hours?

A That was my fault, because that was in all the other contracts, and I had it in mind when I drew this that it was 5 and a half rather than six, and that is how come five and a half to be put in there.

Q How about section 7? Isn't that a change from our agreement on October 22?

A Yes, I believe it is.

Q Well, why was that changed then, after we had just reached an agreement on the old clause?

A I will have to be refreshed. I want to answer as fast as possible here, but I have to compare the old Section 7 and see, does it deal with this same subject?

Q Old Article VI which was covered by agreement on October 22 —

[630] TRIAL EXAMINER:

Article VI in which exhibit?

MR. BOWDEN:

It would be his proposal of October 9, and I will give you the number of that.

TRIAL EXAMINER:

Exhibit 18.

MR. BOWDEN:

Yes sir.

Q (Con't) Do you know why that was changed, Mr. Wingate?

A I don't know how it was changed, Mr. Bowden. I have no idea. I know that some of the things, as this contract was drawn up, were missed, and other articles were put in this last page as General Provisions, and some of them consisted of agreements which had been reached previously.

Q And what did Mr. Stephenson say about these various parts of this Article XXI, the General Provisions; what were his comments about those?

A Well, to start with Section 1 —

Q That was new, was it not?

A That is correct. He wanted "regularly scheduled" split shifts spelled out.

Article II of Section 2, rather, he didn't raise no question on.

Article III, he asked that the words "as far as practical" be put in the first of the section.

Section 4 he asked that we insert "who is off-clock for meal period" in that section.

The next objection raised by him, or change that he [631] suggested, was in Section 9.

Q Well, going back to 5 and 6, this is a new proposal there, or it is a variation of your minimum standards again that we had discussed on many occasions before, had we not?

A That is part of what you might call maintenance of standards.

Q What did he say about that?

A He voiced no objection to that.

TRIAL EXAMINER:

Did he say anything about it at all?

THE WITNESS:

No sir, Mr. Examiner. As we went down we only took up the issues that he was in disagreement with and wanted to change.

Q Well, are you assuming that if he didn't say anything about 6 he was in accord with it?

A Yes sir, because he had had this agreement in his possession long enough to have fully went through it and examined it.

Q Was he talking about, as you mentioned before, only small items he thought you and he could work out, or was he talking about the whole contract now, at this time that you had this conversation?

A Well, all I can relate is what he told me, that the agreement looked pretty good to him and wasn't too far off from what we had, and that it in general followed our negotiations, but there were a few things that he would like to talk to me about, person to person, and see if we couldn't work [632] out some changes in them, or see what my response or reaction was to the suggestions he had to make, saying that it didn't mean they didn't agree to it, that the company wouldn't agree to it if they were not made, but wanting to know what I thought about making these changes.

Q How long did you say this conference with Mr. Stephenson lasted?

A It lasted, as I recall, from 11 o'clock into the noon hour some time.

Q About an hour?

A It lasted longer than an hour; I would say an hour and a quarter to an hour and a half, somewhere in that vicinity.

Q And even though you recall we had spent quite a bit of time negotiating this article previously, Mr. Stephenson had no objection to it at this time?

A That is correct.

TRIAL EXAMINER:

Are you referring to the article or to a particular section?

MR. BOWDEN:

I am talking about Section 6 of Article XXI.

Q I believe that was your statement, that he just didn't discuss it, is that right?

A We went straight down until he came to one that he objected to, and he would say "This is another one we would like to have changes made in," and he would say what they were.

TRIAL EXAMINER:

And in between you didn't discuss them at [633] all; those that you skipped over you didn't even discuss, is that right?

THE WITNESS:

That is correct.

Q Sections 8, 9 and 10 are all new proposals, aren't they, in this article?

A Well, 8 is a part, it is language out of the old AF of L contract; and 9 is taking care of a subject that was not covered in the Leave of Absence Article that we proposed,

having to do with pregnancy, which was important that we get something about that in there.

TRIAL EXAMINER:

Had it ever been discussed at any meeting?

THE WITNESS:

Yes sir.

Q As a matter of fact, wasn't that a part of the old Leave of Absence clause that we had previously agreed on?

A That is correct. That was part of the — not word for word, it is changed, but I mean dealing with the subject which was in the old.

Q I know this is changed, that is the reason I asked you. Hadn't we already, in our Leave of Absence clause, previously agreed on a section covering pregnancy?

A I don't recollect that we had agreed on that.

Q Hadn't we agreed on the whole Leave of Absence clause?

A My notes do not reflect that, Mr. Bowden.

Q Do you recall whether Mr. Robert's notes indicate that he had agreed to the Leave of Absence clause as proposed, which [634] included pregnancy?

A I never seen his notes, Mr. Bowden.

Q In Article XXII, did you and Mr. Stephenson discuss that?

A No sir, we did not.

Q As a matter of fact, there had been little or no bargaining on duration at all, is that right?

A That is correct.

Q Now, at that time, when you were working out these small details with Mr. Stephenson, did you have a wage proposal coupled with this?

A Yes, there was.

Q And how much was that?

A We asked 25 cents an hour on the hourly workers, and a percentage on the piece work equivalent to what would be 25 cents an hour.

Q And what was the understanding of what was going to happen there?

A Well, I had actually in our discussions of this thing, I had more or less mentioned the Addendum A, and after we had concluded our going through this agreement he asked me if we were serious about the 25 cents an hour. He says, "You are not serious about the 25 cents an hour?" And I says, "Well, that is what the people voted in that meeting, that they wanted to request the 25 cents an hour." And he said, "Well, [635] what in your opinion would it take to settle it?" And I told him I thought 15 cents would settle it; that was just my opinion, that if the company would be willing to go that far with it it would, but they would like to have some kind of wage proposal upon which at least to consider it.

Q Well, at a subsequent time did the company furnish you with a wage proposal?

A In January we received a wage proposal through the mail.

Q Yes. Now did you contact Mr. Stephenson about this matter any more after this meeting that you have just told us lasted about an hour or an hour and thirty minutes?

A I made a least three telephone calls to Mr. Stephenson regarding a meeting.

Q I mean about the proposals you said you were going to consider. He had found some objections, had he not, and

did you carry that discussion any further with him on the phone, with him personally?

A No. The purpose as I deemed it to be, the meeting was between him and me to see how far apart, what the possibility of getting together without interference from either side was, and that is what we arrived at; and then I told him that I thought it would be in order to call the committee together immediately and go over these things, because I was as sure as I could be that that committee would concede to most of these changes that he wanted.

[636] Q And he expressed the same thought to you, that he thought he could work out his part of it?

A I don't recall that he made any such statement as that; in fact, I am sure he didn't.

Q All right, when was your next meeting with the company?

A December 18th.

Q Who was present at that meeting?

A Myself, Mr. Teague, the committee, and I believe Mr. Pollard and Mr. Beasley was in that meeting.

Q Who was present for the company, if you recall?

A All the ones I recall is yourself, Mr. Stephenson and Mr. Walker.

Q Now do you recall when that meeting was held?

A You mean the time of day it was held?

Q The time of day, yes.

A The time of day it was held was 10 o'clock in the morning.

Q Had any event occurred in the industry immediately prior to this meeting? Had there been a major freeze?

A I think it was on the 12th of December.

Q Do you know if, as a result of the freeze, on the

morning of December 18th the union had suspended negotiations at Bordo for a period of a month?

A No, I do not.

Q You didn't know that?

[637] A No sir, I did not.

TRIAL EXAMINER:

Did your local represent the employees of that company?

THE WITNESS:

Not this local, sir. It is a different local union.

TRIAL EXAMINER:

All right.

Q There is a joint council. All three locals have a joint council, don't they?

A Yes, that is correct.

Q You are employed by the Joint Council, are you not?

A That is correct.

Q All right, sir. What happened at that meeting of December 18?

A Well, that being the first meeting that I had been able to secure with the company since this proposal, or since the meeting with Mr. Stephenson, I asked with regard to that proposal, sir, what the company's position was, and I was told that the proposal differed so much from anything that had ever been decided in past negotiations that there was nothing to talk about, that the company had absolutely nothing to offer that morning whatsoever.

Q Who told you that?

A You did.

Q I did, all right.

A You made that statement and I made two or three at

tempts [638] to try to get you to say what, if anything, was wrong with this proposal, as I was puzzled; that since I had met with Mr. Stephenson and he was in the meeting sitting there by your side, that you would come out with that, and I finally asked him was that his position, too, and he nodded his head in the affirmative; and you said that Mr. Walker was here, that we had had a severe freeze, and that he was here to talk to the committee.

And I requested that I be able to clarify the union's position, since the attitude that the company committee had come in with didn't leave me with much doubt as to what Mr. Walker was probably going to say, that he had nothing to offer whatsoever, and I wanted to at least get in my statement, that we realized there had been a freeze, but that we still had the business of trying to get together on this contract, and that after all the months and meetings that we had had, and negotiations, we felt like we ought to continue on and at least consider the proposal, even if we excepted the monetary items.

Q When did you say all this, Mr. Wingate?

A I said this at the beginning, when Mr. Walker was wanting to — you said he had a statement to make.

Q Did you at any time say anything to me or the committee about this supposed agreement that you had with Mr. Stephenson?

A No, I didn't, but I —

[639] Q You said a lot, though, didn't you?

A When you turned flat down and said the company had absolutely nothing to offer that morning, Mr. Stephenson was sitting there by your side, and I specifically asked him if that was his position, in order to try to clear my mind

that he was in accord with what you were saying, and he nodded in the affirmative; so I decided that something had happened and the agreement that we had reached had been withdrawn.

Q Well, now, there wasn't any secret about this meeting between you and Mr. Stephenson, was there?

A Not particularly.

Q Why did you just say, "Is that your position?" instead of asking him had he changed his position as to what you had agreed on? Did you ever ask him that?

A No, I did not.

Q Did you advise me or tell me that you and Mr. Stephenson had any agreement on anything that I didn't know about?

A Mr. Bowden, if you will recall —

Q Will you answer my question?

A I did not, and the fact that you said you didn't want to get into negotiating the contract or talking about it, left me in no position to. Mr. Walker was sitting, wanting to make his statement, and I merely wanted to clarify our side of the picture.

Q Did you, from the time of this alleged agreement with [640] Mr. Stephenson in early December, as far as our meeting on December 18th, say anything to me by way of letter or phone call, about any agreement that you had with Mr. Stephenson?

A No, I did not.

Q And you didn't mention it at this meeting of December 18th?

A No, I did not.

Q Did you, after that meeting of December 18th through and including the meeting of January 28th, say anything to

me, either verbally or by letter, or in negotiations, about this so-called agreement you had with Mr. Stephenson?

A No, I did not.

Q Did you at any time mention in negotiations to anyone about these so-called agreements?

A Anyone? Who are you referring to?

Q I asked you first off to me, then I asked in the negotiations had you made any statement to anyone else regarding any agreement that you allege you had with Mr. Stephenson?

A I had made statements to my people and to Mr. Teague concerning that.

Q I see; but you hadn't made any statements at a meeting?

A No.

Q I see. After our wage proposal, and when you made the wage proposal which you — I don't know the exhibit number, but which is in the file, I believe it is General Counsel's Exhibit 24 —

[641] TRIAL EXAMINER:

Just a moment, I think you have the number wrong, don't you?

MR. BOWDEN:

I think Wingate's letter to Steve is a wage offer.

MRS. FASSIG:

Exhibit 24 is Wingate's January 10th letter to Stephenson.

TRIAL EXAMINER:

All right.

Q Did you, with that wage proposal that you made as appears in General Counsel's Exhibit 24, couple any of these so-called new agreements that you had with Stephenson into it?

MRS. FASSIG:

I object. The correspondence speaks for itself.

TRIAL EXAMINER:

May I see Exhibit 24?

I sustain the objection.

MR. BOWDEN:

All right.

Q Why didn't you include those, Mr. Wingate, with your wage offer, if you had, as you put it, an agreement with Mr. Stephenson about it?

A We had been informed, Mr. Bowden, that the company had absolutely nothing to offer in the way of wages, contracts or anything, and that was a last and final effort to try to meet the company and at least get a proposal out of them of some kind.

Q What are you referring to now?

A I am talking about the last communication on the wage rate.

[642] Q You had a company proposal just prior to that on wages, didn't you?

A Just prior to that, without a contract, yes.

Q You had at least 75 to 80 per cent of a contract which had already been agreed upon between your committee and the company, had you not?

A It had up until the morning of the 18th, when you announced you had nothing to offer in the way of a contract.

Q To go back to this December 18th meeting again, let us find out, Mr. Wingate, what actually happened on that morning. Do you recall that Mr. Teague came over to the meeting before you started?

A That he came over —

Q Before the meeting started, and had a long talk with you and the committee behind closed doors, and asked that we wait until he got through? Do you recall that?

A I recall that we talked to Mr. Teague that morning.

Q And we waited outside while this was going on, some thirty minutes?

A I wouldn't say that is not true.

Q All right. And who was the spokesman for the union group when the meeting started?

A I was.

Q Now when I walked in did I advise you that Mr. Walker was there and he would like to say a few words to the committee?

[643] A That is not the way I recall it, Mr. Bowden. When you walked in and took a chair, along with Mr. Stephenson and Mr. Walker, you didn't produce any of the usual stuff — and I notice that — that you use in negotiations, and then you announced that you had Mr. Walker with you, who wanted to make a speech or some statements regarding the freeze.

Q Did you not then object to Mr. Walker talking, and made the statement that before he said anything you wanted to say your piece?

A Well, I wanted to — first I wanted to find out what the company's position was on our contract proposal, that is what I tried to do first.

Q Didn't you make the statement — my question was, didn't you make the statement, when I said Mr. Walker

would like to say a few words, since he was general manager of the company over there, that you refused to let him say anything, and you said you were going to have your say first?

A I didn't say I would have my say first; I said I would like to clarify the Union's position.

Q Weren't you at the time talking in a loud tone of voice, and becoming very arrogant about what you were going to say, and criticizing the company pretty severely at that time?

A I can't talk very loud, Mr. Bowden.

Q You can't? Didn't you make the statement at that time that you didn't want to hear anything about the freeze from anybody?

[644] A No, I did not.

Q You didn't say that?

A I did not.

Q Then, didn't you tell Mr. Walker, in line with that conversation, that you didn't want to hear anything about a freeze; the people were tired of waiting, and had told us unless we get an agreement that day by 4 o'clock that afternoon you were going to strike?

A I did not.

Q You didn't say that?

A I did not.

Q Mr. Walker told you at that time he didn't react very well to threats. and he didn't feel inclined to say anything after that; do you recall that?

A I recall that Mr. Walker said exactly what you said. That is not all the conversation, and that is not all I said in relation to it.

Q Didn't you say, then, at the conclusion of that, that

you didn't see much use in sitting around there, and that you were leaving?

A No, I did not.

Q You didn't say that?

A I certainly did not.

Q Didn't you get up and leave then?

A Mr. Walker is the one who said, as far as he was concerned [645] this meeting was adjourned.

Q Don't you remember making the statement that you didn't see any use in sitting around there, and that you were leaving?

A I don't recall making any such statement as that.

Q Well, would you say you did not?

A I would say I did not.

Q Did not?

A Yes.

Q How long did that meeting last? Didn't you leave right after that?

A I certainly did.

Q Yes. How long did the meeting last?

A I left as soon as Mr. Walker announced that there would be — that the meeting was adjourned.

Q And you didn't tell the committee at that time that they would have to accept this proposal of the Union's by 4 o'clock that afternoon or else?

A No, I did not. I referred to the fact that if we had not reached an agreement of some kind, or made substantial progress, by 4 o'clock that afternoon, we would have to do whatever was necessary; and you asked me did I mean that we would strike, and I told you that was a possibility.

Q Well, there was some reference, then, you now admit, that we had a deadline until 4 o'clock to get something going, isn't that right?

[646] A That is right, I mentioned 4 o'clock.

Q Now, when was the next time you asked for a meeting, after the meeting of December 18? Did you ask for a meeting during the balance of December?

A I believe it was in January, the next meeting.

Q As a matter of fact, the first time you asked for a meeting after the meeting of December 18 was after we had made the wage offer to you, and then you replied to the wage offer; isn't that the first time?

A That is right; I believe that most of it is in the communication between myself and the company that will establish those.

Q Then immediately after you had turned down the wage offer and made your proposal, the strike occurred a few days thereafter, did it not?

A A week thereafter, yes.

Q A week thereafter.

A Approximately a week. I know we gave the company time to see if we would get an answer from our proposal, and we didn't receive one.

Q Well then, let me ask you this. In point of time when was it that your membership authorized your bargaining committee to strike?

A At the November 14 meeting, I believe was when that action was taken.

[647] Q So that all your committee had to do, at any time after November 14, was to decide themselves that they wanted to strike, and make it official, is that correct?

A They were empowered with that authority.

Q And did they exercise that authority, then, on January 17?

A They did.

Q How many members were present at the meeting at which they authorized it?

MRS. FASSIG:

I object as immaterial and irrelevant.

TRIAL EXAMINER:

I will hear from you, Mr. Bowden.

MR. BOWDEN:

My purpose being that I want to show that it was not a representative group that passed on the proposal of the committee; that that was the purpose of the petition, to show that they were being handled without the consent or the knowledge of the people in the plant, and it was the dissatisfaction with that manner of handling which was the reason that they had a failure of support in their strike, and a subsequent petition to oust them as bargaining representatives.

MRS. FASSIG:

I cannot see any materiality to any allegation of the complaint.

TRIAL EXAMINER:

Well, it does have a bearing, it would seem to me, on the question of the Respondents' questioning of the Union majority at a later time. They did question the Union's majority at a later time, did they not?

[648] MRS. FASSIG:

Yes, they did, on the basis of petitions filed with them by the employees.

TRIAL EXAMINER:

Yes.

MRS. FASSIG:

But I think it is entirely immaterial in that connection as to how many employees who were members of the Union were present at the Union membership meeting of November 14.

TRIAL EXAMINER:

I will overrule the objection. He may answer.

Q (Question read, "How many members were present at the meeting at which they authorized it?")

A I couldn't give you a specific number. I don't know. There were fifty or sixty people present.

Q 50 or 60 people. Approximately how many people were working at the plant at that time, or who are employees of the plant?

A I think it runs around 800, roughly.

Q (By Trial Examiner) How many of them were members of the Union at that time, if you know?

A At that time I believe there were approximately 500 members.

Q (By Mr. Bowden) At the meeting of January 28, where was that held and who was present at that meeting?

TRIAL EXAMINER:

Before you get to that, I would like to ask the witness a question about General Counsel's Exhibit 24.

[649] MR. BOWDEN:

All right.

TRIAL EXAMINER:

His letter to Mr. Stephenson.

Q (By Trial Examiner) Will you look at the second paragraph, Mr. Wingate, right after the first colon in the center of the paragraph, the reference there to "the final proposal on a contract which you already have in your possession." Which proposal were you referring to there?

A I was referring to this proposal.

Q General Counsel's Exhibit No. 20?

A Yes, sir.

TRIAL EXAMINER:

All right.

Q (By Mr. Bowden) We were discussing the meeting of January 28th, and I ask you where had that meeting been held, and who was present?

A That was held in the Walesbilt Hotel, on the mezzanine floor.

Q Who was present?

A For the union Joe Morgan, Tom Owens, the employee members of the committee and myself. For the company Mr. Bowden, Mr. Stephenson, and I can't recall, it seems like Mr. McVay was there, but I am not positive.

Q Do you recall that the meeting was scheduled for 11 o'clock, and we met at that time?

A Yes, I do.

Q Do you recall how long the union conducted its caucuses [650] and meetings among themselves before we started negotiating between the two groups?

A I don't recall. I recall the union committee went in, and the management committee went in and sat down, and eventually Mr. Morgan asked you, "Are you ready to pro-

ceed?" and you said you had been ready since 11 o'clock, or something to that effect.

Q Do you recall what was negotiated, or what conversation took place then, before noon?

A I remember that Mr. Morgan, who acted as spokesman, inquired as to what was wrong with the negotiations, what was wrong with our contract proposal, and you told him he had notes, look back at his own notes and find out what was the matter with it, and referred to the Arbitration, the Military clause, and I believe Maintenance of Standards or something that was different, and that it was so much different it wasn't even negotiable. So Mr. Morgan says, "Well, where is your proposal? We will use that. Let's get started."

So he took a copy of your original proposal and started on Article I, and he went right on down through the — he stopped, I believe, about Article X or something.

Q In other words, we negotiated the balance of the day on that?

A I believe we recessed about 4:30 or 4:45. We didn't recess, that is when the meeting broke up.

[651] Q Do you recall my telling Mr. Morgan that we objected to sitting down and agreeing with you on proposals, and then having a fresh proposal on the same subject, which had happened a number of times during the negotiations?

A No, sir. I remember you telling him to check his own notes if he wanted to know what was the matter with that proposal.

Q You don't recall a conversation in which he asked me what had been agreed to that had been re-proposed here, and we went over that proposal of November 23rd and

pointed out to him those places where you had proposed new articles that had previously been agreed on?

A No, sir, I do not.

Q You have no recollection of that at all?

A No, sir, I do not. I remember you referring to two or three clauses or articles in there, but as far as making a detailed study and going through it, I don't recall that that happened.

Q Well, that was the company's position, if I understand your testimony, at that time, that we objected to having to re-negotiate articles that we had already negotiated and we had reached an agreement on, didn't we?

A I remember, Mr. Bowden, that your objection to that proposal was that it was so different from anything that had ever been discussed or negotiated on, and that is when Mr. Morgan said, "Well, we will take your proposal and negotiate from it."

[652] Q And that is what happened then, for the balance of the day, was it not?

A That is correct.

Q Now, do you recall what the circumstances were at the plant during this period of time?

TRIAL EXAMINER:

Which period?

MR. BOWDEN:

I was speaking about the period around January 28, when we had this meeting.

Q Was the strike still going on at that time?

A There was a strike in progress, yes.

Q Had there been any subsequent freezes other than the original freeze on December 10 or 12?

A We had two or three freezes, and I think at least one of them may have been in that period.

Q (By Trial Examiner) You mean shortly before the 28 of January?

A Between the 12th of December and the 28th of January we had at least one freeze; maybe both of them came in that time.

Q Well, did the second one come before or after the strike began?

A After the strike began.

Q Were there two bad freezes last winter?

A I believe there were three altogether.

Q When did the third one come? Was it after January 28th?

A Yes, I think so.

[653] Q (By Mr. Bowden) All right. As a matter of fact, Mr. Wingate, there were a total of five freezes during the last winter, three more severe than the other two, were there not?

A Well, I froze just about all winter, and I can't name the number of freezes it would take.

TRIAL EXAMINER:

What does the temperature have to go to in the orange industry before they count it a freeze?

THE WITNESS:

Well, to do extensive damage it has to go down to 24 and 26, and stay down there for some few hours.

MR. BOWDEN:

May we have a break at this time?

TRIAL EXAMINER:

Yes, we will take a five minute recess.

(Short Recess)

TRIAL EXAMINER:

Proceed.

Q (By Mr. Bowden) Mr. Wingate, will you get General Counsel Exhibit 13?

A Yes, I have it.

Q Mr. Wingate, do you recall any meetings at which the provisions of this proposal were discussed?

A Yes. September 19 there were some provisions of this proposal discussed.

Q September 19th? Waat was discussed on that date?

A I believe we discussed the protection of rights clause on that day.

TRIAL EXAMINER:

In that proposal or from the company's proposal?

[654] THE WITNESS:

In the afternoon session, as I remember it, we discussed this proposal.

TRIAL EXAMINER:

The Union's proposal?

THE WITNESS:

Yes.

Q I will ask you this: Is it your recollection, or do you have any knowledge, of whether all the articles in this proposal were gone over or discussed, as the case may be?

A I don't have any recollection that they all were gone over and discussed.

Q All right. Do you know of any article in this proposal which was not discussed with you upon request?

A No, I can't recall you refusing to discuss an article.

Q (By Trial Examiner) Well, did Mr. Bowden at any time refuse to discuss an article with you?

A No sir, he did not.

Q Down to December 18th? Let us stop at that time.

A The nearest he came to refusing to discuss was on the — September 19th I believe was the date that he made reference to, "we can go over and belabor those things if you want to, but I see no point in it."

Q Well, did you agree with him?

A No sir, I did not agree with him.

Q Well, what happened after that?

A We had some discussion on this proposal, I think.

• • • •

[671] DAVID F. WINGATE

a witness called by the General Counsel, resumed the stand and testified further as follows:

CROSS EXAMINATION — Continued

Q (By Mr. Bowden) Mr. Wingate, to go back to this telegram that you sent to Mr. Stephenson, which has been idetified as General Counsel's Exhibit 21-A, what did you mean when you stated in there that that was a final contract and wage proposal?

A I meant by that, Mr. Bowden, that that was the — we had submitted that was the third proposal, and I meant

by it being the final contract and wage proposal that, due to the fact that it contained a majority of our agreements, that was the last one we intended to tender as a complete proposal.

Q In other words, you meant that that was the last, not the most recent but the last one you intended to submit, did you not?

A I meant that that was the one which we were submitting as the last proposal, of course subject to later negotiations.

Q Well, are you using the words "final" and "last" as meaning the same thing in your own mind?

A It could be that, yes.

Q Well, then, in General Counsel's Exhibit 24 you make [672] reference to the last and final proposal. What did you mean by that?

A That is the last proposal sent to the company, I presume?

Q That is right.

A Well, that meant exactly what it said.

Q Well, what is the difference in the intent of that language as appears in General Counsel's Exhibit 21-A, in which you said, just "final" contract?

A Well, we had been unable to get any negotiations on the final proposal as mentioned in the first exhibit there that you mentioned, and this was a further attempt and final attempt to get the company to give us at least a counter proposal, or at least what their position was on this proposal that we had submitted.

Q I take it, from what you have said, Mr. Wingate, that you meant that you had no intention of making any further proposals on behalf of the Union?

A We couldn't very well, Mr. Bowden, until we got some hearing from the company on what they would do, or at least give us some indication that they were willing to do something or other.

Q Now getting back to this meeting of December 18th, briefly, did you make any notes at that meeting?

A Yes, I did.

Q Do you have those with you?

A Yes, I do.

[673] Q These are your original notes, are they not?

A Yes.

Q Would you refer to your notes as I ask you questions, and see if it corresponds with your notes?

TRIAL EXAMINER:

When did you make these notes?

THE WITNESS:

I made these notes at the meeting of December 18th.

TRIAL EXAMINER:

While it was going on?

THE WITNESS:

I finished them up, sir, after it was over.

Q When you say after, when do you mean?

A I mean before I left the room, while sitting there at the table.

Q You mean you finished those notes before you walked out with the committee?

A While we were still there, I had just made notes

to a resume of the meeting and what happened in the meeting, and as I was sitting there I was writing these notes.

Q And that was while you were talking and while we were discussing these things that came up?

A Yes sir, that is right.

Q During that meeting I am talking about?

A That is right.

Q All right, sir. What do your notes reflect as to the way that meeting started?

A My notes reflect that the company was asked what their [674] position was on our last proposal that we had presented to them.

Q And what was said then, sir?

A My notes reflect that at that time you said that after reading that proposal, that it was so far from anything that we had ever negotiated on, in fact, you didn't want to get into it now. I didn't make the notes of the first part of the meeting, where you said Mr. Walker wanted to make a statement, but when I asked what the company's position was with respect to that proposal that is what you said.

Q All right, sir. Were you told at that time that we would get into that as soon as we had given Mr. Walker an opportunity to make a statement that he wanted to make?

A No sir.

Q You don't recall that at all?

A No sir, I don't.

Q Did you finish?

A Well, I was going to qualify it. I will answer your question. What I recall about the thing was, and what my notes reflect, is that you said that we didn't want to

get into that anyway, but Mr. Walker had something to say, as the company had nothing to offer.

Q Did we say that, or did we say, Mr. Wingate, that we would get into that as soon as Mr. Walker had an opportunity to make a statement that he came up to make to the committee? What do your notes show in that regard? [675] A My notes don't specifically show either way.

MR. BOWDEN:

All right.

TRIAL EXAMINER:

You didn't attempt to copy down the entire language, did you, in your notes?

THE WITNESS:

Not the entire, no sir.

Q All right, sir. Then was Mr. Walker allowed to make a statement at that time?

A I first asked permission, or said that I would like to clarify the Union's position with respect to the negotiations, prior to Mr. Walker's talk.

Q All right, sir. Did you?

A Yes, I did.

Q How long did that go on?

A I couldn't say. I imagine ten or fifteen minutes.

Q Did you and I at that time get into — You accused the company of stalling, I believe, at that time, did you not?

A I said that the company hadn't seemed as interested in consummating the negotiations, and that in my opinion if they were going to try to use the freeze as a further delay in negotiations, well, we just couldn't go along with it.

Q Do you recall my calling to your attention several instances where we had been unable to meet because of the Union?

A No sir, I don't remember that.

Q You don't recall any conversation between you and me at that time about the meeting at which you failed to show, or the [676] time that you were taking off for the Union convention, or in reference to the time since you had requested the last meeting prior to this one? You don't recall any conversation along those lines?

A It seems as if I recall that the lapse of time at the convention while it was going on was mentioned, and you used that. As far as the other times, not showing up, I don't recall that, no.

Q After that exchange, then was Mr. Walker allowed an opportunity to speak?

A I asked that I have an opportunity to clarify the Union's position before Mr. Walker spoke, which I did.

Q Well, after that was Mr. Walker finally given the opportunity to say — I will ask you this before you answer that one. Didn't you at that time make the statement in this outburst that you went into at the beginning, that the company had until four o'clock that afternoon to decide, to either make substantial concessions or agree on a contract or that you were going to strike?

A I did not.

Q Did you tell us at that time that you had authority to strike, and we had to either make substantial concessions or agree on a contract, or you were going to use it?

A I told you that we would report the results of this meeting back to the people, and that we would be governed by their [677] wishes.

Q All right, sir. Then when Mr. Walker finally was allowed to speak, what did he say?

A He said that we had caught him in a crisis, and if we thought that threats were going to get us anywhere, well, they weren't, because he didn't react very well under threats.

Q Now you know who Mr. Walker is, do you not?

A I certainly do, yes sir.

Q What is his position?

A General Manager of Florida Citrus Canners.

Q Do you know whether he holds any official position, or did at that time, with the Florida Citrus Commission?

A As I recall he was a member of the Florida Citrus Commission at that time.

Q Now he declined to make any statement then, after you had finished your statement at the beginning of the meeting, did he not?

A Yes, he did.

Q What happened after that?

A When we had — You inquired of Mr. Walker if he wanted to talk now, and he said that the things that I had just quoted, and further said as far as he was concerned the meeting was over.

Q Did he say that, or did he say as far as he was concerned he had nothing to say?

A He said as far as he was concerned the meeting was adjourned.

[678] Q Are you speaking from memory now, or are you speaking from your notes?

A I am speaking from memory. It may be covered in my notes; I would have to check here.

TRIAL EXAMINER:
That was the last thing said, wasn't it?

MR. BOWDEN:
In the meeting, sir?

TRIAL EXAMINER:
Yes, was that the last thing said in the meeting?

THE WITNESS:
Yes.

TRIAL EXAMINER:
Look at the end of the notes, then.

THE WITNESS:
I am trying to find the end, sir. I have got some on the margin. My notes don't reflect that.

Q After that didn't either you or Mr. Teague ask me what the sections were in your proposal of November 23rd, which is General Counsel's Exhibit 20, which had previously been agreed to and changed in that proposal? Do you remember any conversation along that line?

A I do at the beginning of the meeting.

Q Did we not at that time point out to you several instances where that proposal changed previous agreements on items?

A You said, you mentioned the military clause and arbitration, and said, "There are others just too numerous to mention."

Q Was that all that was said in that regard?

A That is correct. That is after I had inquired specifically what the —

[679] Q Did you then make the statement that if that was the way we felt about it you didn't see any use in sitting there?

A I recall making no such statement, no sir.

Q And that you thought you would go?

A No sir.

Q Were you advised by the company that that was all right with us, and thereafter we all left; do you recall that, those incidents?

A No sir. I remember it as I have related it.

TRIAL EXAMINER:

Did you at any time make reference to the meeting with Mr. Stephenson, back early in December?

THE WITNESS:

No sir, I did not.

Q Now as I recall your testimony, then you made no further request for a meeting until then shortly before the strike, is that right?

A That is correct, as I recall.

Q And in regard to the meeting of January 28th, did you make notes of that meeting?

A Yes, I have a few notes on that meeting.

Q Do you recall at that meeting, when it was again brought to the attention of your committee that previous agreements had been changed in that last and final proposal of yours?

A I recall that that was your position.

Q And what happened, or what was your reply to that?

A As to what they were; what were the changes?

[680] Q Do you recall going over that November 23rd

proposal and discussing those previous agreements that had been changed?

A No sir, I don't recall that. All I recall is negotiating from the company's proposal that day.

Q Mr. Wingate, weren't there a number of provisions in your proposal that you had submitted to the company, that you were unable to discuss and negotiation because you didn't know what they meant?

A There were two or three items which I was not familiar with the application of, that I requested another person who was to come in and discuss those particular sections or articles.

Q But for a long period during these negotiations you were still insisting on those articles, even though you didn't understand them or were unable to explain them?

A Well, the negotiations I remember concerning those was the observation by the company, or the inquiry, that if we could apply that just on a local basis and not as it was written out in the agreement, and there were questions asked about the application of that that I was not familiar with, and I believe that I informed you that I would bring somebody in that was thoroughly familiar with those, who had worked with those same subjects in other companies.

Q (By Trial Examiner) What were those subjects?

A The Protection of Rights Clause was one, the Maintenance of Standards was one other, and I can't think right now what [681] the third one was.

Q Who had drawn those?

A Brother Teague.

Q And you put them in the contract?

A Yes sir, they were in.

Q (By Mr. Bowden) Didn't you assist him in the preparation of those proposals, according to your previous testimony?

A I had very little to do with them. Mr. Beasley assisted Mr. Teague in that, and I think I was in with them about twenty minutes at one time when they were preparing those proposals.

Q Do you remember our discussions and deliberations on your proposal on the Health and Welfare Fund?

A No sir, I don't.

Q You don't recall being advised that we were not a member of any employer association, and therefore could not legally make any deductions as you were proposing?

A No, I don't recall that.

Q You don't recall anything about that?

A No sir, I don't.

Q Now in reference to the Union meetings and the dissemination of the result of the negotiations to the employees of the respondent, how were they notified about what was transpiring in the negotiations?

A They were notified by reports at the Local Union meetings.

Q How was the notice of the Local Union meetings disseminated [682] to the employees?

A By postcard.

Q In other words, as I understand it, the employees in the production unit that you were certified for, unless they were Union members, had no notice of these meetings, is that correct?

A That is correct.

Q Were they permitted to come into the meetings to discuss or take part in the deliberations on these contract provisions?

A They were invited to come in and join the Union and take part in them.

Q That's right, they were required to join the Union before they were allowed to take part in the negotiations or vote on the conduct of the negotiations, were they not?

A That is correct.

Q Have you any personal knowledge, Mr. Wingate, of the number of employees that were generally employed by the company during its peak operating season?

A Between eight hundred and nine hundred, I think, Mr. Bowden.

Q And could you tell for the record what is normally considered the operating season in the industry?

A Well, the normal operating season is from the first day when all the operations of the plant starts, until the last day in the fall or summer when they cease to operate.

Q Well, that generally follows a pretty fixed pattern in reference to time. Would you say it is from December to March, [683] or from November to April? What is the pattern of that?

A Well, it is not exactly a pattern. For instance, this past year the fruit was earlier, and they were able to start processing earlier than they were before.

Q (By Trial Examiner) Tell us what the normal season is.

A Well, you mean the average season —

Q The normal season?

A — would be from, I would say, around October 15th until May, the middle of May.

Q Seven months?

A Approximately, yes, sir.

Q (By Mr. Bowden) At the time of these negotiations

with the Respondent, I believe you testified that there were negotiations going on at Minute Maid, Bordo, Adams and possibly Stokely-Bordo and other plants, were there not?

A Well, with the exception of Bordo; the negotiations started there late because of the delay in certification, but at the last part of our negotiations that is true.

Q And I believe you testified you were participating in other negotiations at this time, were you not?

A I was attending other negotiating sessions as the opportunity presented itself.

* * * *

[706] WALTER W. TEAGUE

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q (By Mrs. Fassig) State your full name, and spell it, please, for the Reporter.

A Walter Wesley Teague, T-e-a-g-u-e.

Q And your address, Mr. Teague?

A Route 2, Box 187, Winter Haven, Florida.

Q Mr. Teague, will you tell us what your present official position is in the Teamsters organization?

A Yes, ma'am. I am an organizer for the Southern Conference, whose headquarters are in Dallas, Texas, covering the ten Southern states.

Q And will you describe for us about what your particular assignment is, was and is, in connection with the citrus industry here in Florida?

A Yes, ma'am. After the elections and certifications, back in the early part of 1957, at various citrus plants, at the request of the membership of the Local unions representing those employees to the Southern Conference, I was assigned in as head of the negotiations for the three Local unions.

Q You said head of the negotiations. Will you develop that a little bit more fully?

[707] A Yes ma'am. The three Local Unions, I believe 173 here in Lake Wales had been certified to represent two companies here; the one in Winter Haven, which is Local 60, had been certified to represent two companies, one in Haines City and one in Winter Haven; and the one in Auburndale had been certified to represent two companies in Auburndale, Minute Maid and Adams; and they had requested that the Teamsters Union send in someone to assist them in their negotiations who could more or less —

MR. BOWDEN:

I am going to object to this. He is talking about some request to the Union, I don't know whether a letter, personally, or who did it. It has not been identified except just generally "they requested." I don't know that that is proper.

TRIAL EXAMINER:

This is background and preliminary. I will overrule the objection. It explains how he got into the negotiations.

MR. BOWDEN:

Well, I thought he said he was assigned here.

TRIAL EXAMINER:
All right, he may answer.

A (Continued) So at that request my immediate superior, M. W. Miller, who is the Chairman and Director of the Southern Conference, assigned me in here to be over David Wingate, John Roberts, Odessa Pollard and Cecil Beasley, who were the Local representatives, and to take charge of the negotiations with these various companies.

* * * *

[709] Q Mr. Teague, do I understand then that you were over Mr. Roberts and Mr. Wingate, and over all the others, and that you had overall supervision of the contract negotiations with all the employers?

A Yes, ma'am.

* * * *

[714] Q Mr. Teague, directing your attention to the October 14th meeting — I think you said a minute ago that you have a recollection of attending that meeting — what time did the October 14th meeting commence?

A One p.m.

Q How long did that meeting last?

A Approximately three and a half hours.

Q And who talked principally for the Union at that meeting?

A I did.

Q And will you tell us what the principal subjects of conversation were?

A The hot cargo clause, the maintenance of standards, the provision to prohibit supervisors doing work covered in the bargaining units, a section of the seniority clause, the no-strike, no-lockout clause.

Q Was agreement reached on any of those sections that day?

A There was agreement reached on the section that the company raised a question on the seniority, there was agreement reached with respect to the supervisors not being able to perform work within the bargaining unit; there was no agreement [715] reached on the maintenance of standards; there was no agreement reached on the no-strike, no-lockout clause, and there was no agreement reached on the hot cargo.

Q Did you attend the Union meeting held on October 22?

A I did.

Q What were the subjects of discussion at that meeting?

A Principally the same subjects were in discussion. However, I believe at that meeting we drew up more or less in final language the clause that would prohibit supervisors from taking the place of the workers in the plant during the non-operating season. I believe that it was at that meeting also that we gave to the company the amended second draft from the old AF of L contract.

Q Directing your attention back for a second to the October 14th meeting, you said that meeting lasted about three and a half hours. At the conclusion of that meeting what was said, if anything, with reference to when another meeting would be held?

A Well, the request was made of the company to continue meeting, and the reason that the Union used, or

that I used, was that we were getting close to the beginning of the operating season, and that it had been some six or seven months since the Union had been certified, and that it seemed to me that if both parties are going to try to get together on a mutually satisfactory contract, that more effort should be put forth [716] in the future than had been put forth in the past, and that we should continue in negotiations from day to day until such time as an agreement had been reached, or until such time as we reached the point where we would disagree, and we could not settle our differences.

Mr. Bowden informed me that the company officials had other duties that would not permit them to meet any more often than we were meeting, that they had to get ready for the beginning of the operating season, and that he also had other clients that he had to devote a certain amount of time to, and that he was scheduling the meetings just as fast and rapidly as he possibly could.

TRIAL EXAMINER:

Was a date agreed on for the next meeting?

THE WITNESS:

They scheduled the 22nd of October as the earliest date that they could meet.

Q All right. Now on the October 22 meeting, when did that meeting begin?

A Around ten o'clock in the morning, at the Walesbilt Hotel.

Q And how long did that meeting last?

A It lasted until approximately three-thirty or four o'clock in the afternoon.

Q And what was said at the conclusion of that October 22 meeting regarding another negotiating session?

A The Union made the same request and got the same reply, substantially, that they would not be able to meet until around [717] the 31st.

Q Was the definite date of October 31st set by either Mr. Bowden or Mr. Stephenson?

A It was made after they had a little discussion among themselves, yes.

Q What reply, if any, did the Union make to the — Was it an offer or a statement by either Mr. Bowden or Mr. Stephenson, that they would not meet again until October 31st?

A Well, it was merely stated that that would be the earliest date that they could get together with us again, and that they felt that satisfactory progress was being made in the negotiations. Of course, we differed with them.

Q That is my question, what if anything did the Union say in reply — who was it made the statement for the company?

A Mr. Bowden.

Q What, if anything, was said by any Union representative in reply to Mr. Bowden?

A Well, substantially, what was told to them on October 14th, that we were right — the operating season was right on us, and that it seemed to me that the Union and the company should be getting — meeting more often in an effort to get the contract, because the people down there were making the request of us, "What is happening to our contract? Are we going to have a contract when we start work this year, or are we not?" But the company still would not change their position as to the meeting [718]

dates, nor would they agree to meet any more often than they had met in the past.

Q Were any agreements reached, to your recollection, during the October 22 meeting?

A I don't recall whether any agreements were made at that particular meeting or not.

Q All right. Now were you present at the next meeting, on October 31?

A For about fifteen or twenty minutes.

TRIAL EXAMINER:

At the beginning?

THE WITNESS:

No sir, just before they adjourned for lunch.

Q Was anyone else with you?

A Yes, a Mr. Owens and Mr. Morgan.

TRIAL EXAMINER:

They were also there for only fifteen minutes?

THE WITNESS:

Yes sir, we came in together and left together.

* * * *

[719] Q Then when was the next meeting that you attended, actual negotiating meeting that you were present during?

A December 18th.

Q All right. Will you give us your recollection of the December 18th meeting, recalling the best you can the

progress of the conversation, the remarks made by various ones present?

A Yes. The meeting started around ten or ten fifteen in the morning, and Mr. Bowden and Mr. Stephenson and Mr. Walker appeared for the company. We were already in the negotiating room when they arrived, and they all sat down around their bargaining table, and Mr. Bowden opened his brief case and took out some cigars, and made a statement to David, "Well, are we ready?" And David said, "Yes." He said, "What is the position with respect to the proposal that was submitted to you last month, from the Union?" And Mr. Bowden said, "Well, we are not going to get into that, because I am sure that all of you are aware that there has been a disastrous freeze within the past [720] few days, and Mr. Walker is here this morning to give the company's position to the Union with respect to that freeze." And David asked him, "Well, what about our proposals? We would like to know where we stand on our proposal before we get into the freeze situation." And Mr. Bowden says, "Well, now, I have told you, David, in as plain English as I know how, we are not going to discuss the proposal this morning, because in checking over it I find that it is so far from anything that we had ever agreed to or ever discussed in our negotiations, that there just isn't any point in going into it at this time." And David asked him to point out what the differences were that he had objection to, and he said, "I don't intend to go into it, David."

So David asked Mr. Stephenson if that reflected his position also, and Mr. Stephenson just nodded his head in the affirmative.

So David then asked if he would be permitted to give the Union's position prior to Mr. Walker making his statement to the committee, and Mr. Bowden said, "Yes, go ahead."

Well, David attempted to summarize the negotiations for the benefit of Mr. Walker, who had not been present in any meetings as far as I have been informed, and after the summary, which took about fifteen minutes, Mr. Bowden asked David in his summarization if he was threatening them with a strike. And David said, "No, I am not threatening you, Mr. Bowden." [721] He said, "I am telling you just what the possibilities may be, because the people down there want a contract, and the company has used excused of other duties keeping them from meeting with us any more often than they have met with us, and now then we feel that you are going to use the freeze as a further excuse, which is evident here this morning that you are not here to negotiate and won't negotiate with us. All this must be referred back to the membership, and whatever action they deem necessary to get a contsact will be taken, and that could include a strike."

Mr. Bowden said, "David, that doesn't scare me one bit. So if the people want to strike, maybe the best thing in the world for them to do is to strike and get it out of their systems, because we certainly don't have anything to offer you, and the threat of a strike is not going to change our position."

Then he turned to Mr. Walker, and Mr. Walker said, "In view of the statements just made by Mr. Wingate, I have nothing to say, and as far as I am concerned this meeting

is over." And with that they proceeded to walk out of the room.

Q Is that the last meeting between the Union and the company at which you were present?

A Yes, ma'am.

Q Mr. Teague, were you present at the meeting when the company's wage proposal which Mr. Stephenson submitted with his letter of January 4, 1958, to the Union —

[722] A Yes, I was.

Q Were you present at that meeting, at the Union meeting, when that wage proposal was submitted to the membership?

A Yes, I was.

Q Can you tell us about how many of the Union members were present at that meeting?

A At the meeting of January —

Q 9th.

A The 9th?

Q Yes.

A There were approximately seventy people present in the meeting that night. I am judging that now because of City Hall, and I believe it will seat about sixty or seventy people, and it was full.

Q Is that where the meeting was held?

A Yes ma'am. It was full, and there were some standing up.

Q And can you tell us what you recall of what report was made by Mr. Wingate at that meeting?

A Yes. David gave them —

MR. BOWDEN:

Your Honor, this can be nothing but self-serving, and

we have no way to refute it, but I am going to object to what happened at the Union meeting.

TRIAL EXAMINER:

This goes to the allegation of the complaint which charges that the strike was an unfair labor practice strike in its inception. The only way I know to determine [723] that is to hear what reports were made to the membership and have testimony from the membership as to why they struck.

MR. BOWDEN:

Yes, I can understand testimony from the members themselves, but self-serving declarations by Mr. Teague and Mr. Wingate I don't think are appropriate.

TRIAL EXAMINER:

Well, the members themselves, if they testify to the meeting, would testify presumably to the same thing. Their testimony as to what they heard would be no more irrelevant than the testimony of these Union officials as to what they told the membership. Of course, what was told them there doesn't make it so. Presumably they told the membership that the company is not bargaining with us. That doesn't make it so, but if the membership struck for that reason, and if the finding is ultimately made that there was a refusal to bargain before the strike, then the cause of the strike is established. If it is found to be an economic strike it doesn't matter what the members believed or what reports were made to them. What they believed is not going to change the results any. I will overrule the objection.

A David's report to the membership was that they had had a meeting on December 18th, and he gave the incidents that occurred in that meeting and tried to relate to them as nearly as he possibly could the statements made by all parties in that meeting; and he further related a conversation that he had had with Mr. Stephenson, and that the wage proposal that had been [724] submitted by the company was not accompanied by any contract, and that on receipt of that he called Mr. Stephenson to ask him what about the contract that we had proposed, along with this wage schedule? What is the status of our contract? And that Mr. Stephenson told him that there was no contract, and that that was it. And David said, "Well, I am sure that the membership is not going to accept it in a very pleasant light in the manner in which you are presenting it to us."

And with that he submitted it to them for their consideration, and they asked him what his position would be, what they should do; and he said, "I will not recommend to you one way or the other. You make up your own minds." So after that there were several people that took the floor and made comments about the wage proposal and about the contract situation, and I recall specifically one man said that he didn't care, wasn't interested in money; that the working conditions and job security and seniority were the important things to him, and that if we secured the type of contract they were entitled to they would not have to have a wage increase to make more money, that it would automatically give them more take-home pay.

* * * *

[737] Q That is all I want. Do you recall that you and I got into a discussion about what had been changed in the November 23 proposal of the Union, that we had previously agreed to?

A In this December 18 meeting?

Q Yes.

A I never opened my mouth during the entire meeting.

Q You didn't say anything?

A I never said anything, outside of shaking hands with Mr. Walker and telling him I was glad to meet him.

Q And you deny that that happened, that you went over with me and I pointed out to you a number of changes in that November 23 proposal that was different from the agreement? You deny that that happened?

A Yes sir, that did not happen, Mr. Bowden.

Q Now, you are relying on your memory again when you say that?

A Yes sir, I sure am.

Q Now, do you recall, as you said definitely, that Mr. Wingate turned around to Mr. Stephenson and said, "Mr. Stephenson, is that [738] your position?" and he nodded his head. Do you recall that?

A No, he didn't turn around, because we were facing each other, and he asked Mr. Stephenson, he said, "Steve, does that reflect your position also?" and Mr. Stephenson just nodded his head in the affirmative.

Q Sure about that? What would make you remember that detail?

A Mr. Bowden, it was very important to us at that time, because we had received telegrams from your law firm withdrawing certain proposals.

Q When was this?

A Jost previous to the meeting.

TRIAL EXAMINER:

December 18th?

THE WITNESS:

Just previous to the December 18th meeting with Florida Citrus Canners, we had received several — we had received in fact one, two telegrams from the Bowden-Hamilton law firm, which represents other companies, withdrawing all agreements and all contract proposals, so we expected the same thing when we walked into Florida Citrus Canners that morning.

Q Oh, you were basing — This is all just conjecture on your part, you expected it. Had you actually had anything withdrawn, any agreement withdrawn that Florida Citrus Canners had made with you, Mr. Teague?

A You mean in the way of telegrams?

Q Yes.

A No, we had not.

[739] Q I mean in anyway, any concession that we have ever made to your Union, have we ever withdrawn one concession or agreement that we had with your Union?

A Yes, you did.

Q When was that?

A December 18.

Q You are basing that on this conversation that you said happened?

A Well, that is the only thing I can base it on.

Q All right. Aren't you confusing, as a matter of fact, the Florida Citrus Canners situation with other negotiations

that you were conducting, at which time concessions were withdrawn from you?

A No, I am not. You are representing this company here, and it was the only one that did not send us a telegram, but you did it verbally when we got to the meeting on December 18.

Q In what way?

A That the contract proposal that David had submitted to Mr. Stephenson on or about November 22 was so far from anything that had ever been discussed or had ever been agreed to that you were now farther apart than you ever had been before, and that you had nothing whatsoever to offer.

Q So you then assumed from that that all the previous agreements were withdrawn? Is that right?

A I sure did.

[740] Q Did I tell you that?

A I just told you the words you used to me.

Q I mean other than what you said.

A You didn't tell me anything, Mr. Bowden.

TRIAL EXAMINER:

When you both talk at once the reporter can't get it all.

(Record read beginning, "Q So you then assumed from that that all the previous agreements were withdrawn, is that right?")

MR. BOWDEN:

I don't know whether you are answering that question or not, but did I tell you at that meeting or any meeting, or did any company representative tell you at that meet-

ing that we were withdrawing any agreements that we had with your Union?

A No, you never told me that.

Q Did any company official tell you that?

A No, they did not.

Q Now, at that meeting did you hear Mr. Wingate or did you say anything about this so called agreement that Mr. Wingate said he had with Mr. Stephenson?

A I never said a thing in the meeting, Mr. Bowden.

Q Did you try to say anything about it?

A No, I did not.

Q Did you say anything about it at any time?

A No, I did not.

TRIAL EXAMINER:

Let me ask this question: At the time of that meeting did you know about the earlier meeting that [741] Mr. Wingate had had with Mr. Stephenson earlier in December?

THE WITNESS:

Yes, I did.

* * * *

[744] Q And as I understand it, Mr. Wingate did not submit the last contract proposal until November 23rd, did he?

A Well, now, I thought it was a couple of days earlier than that, but November 23rd could be the date.

Q As far as you know he didn't ask for a meeting before he submitted the last proposal, did he?

A My memory tells me that he did; he called Mr. Stephenson and told him that he had it drafted and that

he would like to meet with him and go over it before presenting it to the company.

Q (By Mr. Bowden) Are you referring to notes or your [745] memory?

A No, I am referring to memory, Mr. Bowden.

Q When was this, Mr. Teague?

A Well, we had our union meeting on November 14th, and this was drafted about the November 14th meeting in its complete form.

TRIAL EXAMINER:

Did you help draft it?

THE WITNESS:

No, I did not.

Q You had nothing to do with the proposal?

A No, sir. I didn't help draft it.

Q Who drafted it up?

A Mr. Wingate and a lady in the office.

Q I mean, he is the one who got the contract language and put it in there?

A Well, if I might explain, it was presented, Mr. Wingate presented it to the members the night of November 14th, in rough draft. There were requests for changes made at that meeting, which necessitated making changes in the rough draft. It was after that meeting that immediately Mr. Wingate and the girl in the office began to compile the contract, which came out in its final form, I believe, as Exhibit 20; I am not sure.

* * * *

[746] Q Do you recall, on December 18th the meeting that you had at Bordo Products in the morning?

A It seems to me that that was on December 17th that we had a meeting with Bordo Products.

Q As a matter of fact it was on the morning of the 18th, wasn't it, Mr. Teague?

A Well, if it had been the morning it would not have lasted thirty minutes; it didn't last thirty minutes, so I think [747] it was on the morning of the 17th.

Q At that time did you suspend negotiations over there on account of the freeze?

A No, we did not. We had no alternative but to.

Q Well, didn't you agree to put off negotiations there?

A We certainly did not.

Q You did not?

A No, sir.

Q What was the reason for putting them off, then?

A Well, your law partner just came in and said they weren't going to negotiate until they found out what the extent of the damage was going to be to the citrus.

Q As a matter of fact, didn't you make the proposal yourself that they be suspended, Mr. Teague?

A I sure did not.

Q Do you deny that?

A Yes, sir, absolutely.

Q Was this meeting of December 18th the last time that you attended any sessions or communicated with Mr. Stephenson or anyone at Florida Citrus Canners?

A No, sir. It was the last session that I attended at Florida Citrus Canners. I have communicated with Mr. Stephenson since then, but I have had no reply.

Q Between December 18th and the strike did you communicate with him?

[748] A No, I did not.

Q Or before the meeting of January 28th did you attempt to set up a meeting after the strike?

A There was an attempt. I didn't do it personally. I believe Mr. Wingate handled that, in the form of a telegram.

Q Did you authorize Mr. Wingate to suspend negotiations so that he could go to the conventions?

A I did.

Q (By Trial Examiner) Did you attend the conventions also?

A Yes, sir, I did.

Q I assume, then, that all the negotiations around here were suspended during that period?

A Yes, sir, they were.

Q (By Mr. Bowden) I believe your testimony in reference to the December 18th meeting was that I came in with my brief case and opened it up, and you said took out a cigar, is that right?

A I believe you took out two.

Q Two cigars?

A Yes, sir.

TRIAL EXAMINER:

This is getting pretty irrelevant.

Q I had a brief case with me at that time, did I not?

A Yes, sir.

TRIAL EXAMINER:

And you opened it. He opened it, did he not?

[749] THE WITNESS:

Yes, sir, he did.

TRIAL EXAMINER:

Are you sure he opened it?

THE WITNESS:

Yes, sir; he had to get those cigars out of there some way.

Q Did we take anything else out of the brief case?

A I never saw anything else, Mr. Bowden.

Q You don't recall any proposal being discussed that was taken out of the brief case?

A There was no proposal discussed that was taken out of the briefcase.

Q Did you testify on your direct why you delayed from February until June to furnish us the original proposal?

A No, there was no delay from February until June. You were furnished the original proposal in April.

Q April, excuse me, that is correct. There was a delay from February until April 16th.

A I have no personal knowledge of that, because I was not in charge of the negotiations at that time.

Q (By Trial Examiner) Do I understand you were Mr. Roberts' boss?

A After I was assigned in here, yes, sir.

Q When was that?

A I believe I came in around May 12th. Well, I have been in and out of here before that, but I was assigned in here for the duration, I believe it was May 12th.

[750] Q When did you lose Mr. Roberts?

A Around September 15th of last year.

Q (By Mr. Bowden) Mr. Teague, have you ever heard any member of the bargaining committee or any supervisory employee state that they would never sign a contract with the Teamsters?

A No, I never heard any supervisory employee say that.

• • • •

[751] J. W. MORGAN,
a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q (By Mrs. Fassig) Will you state your name for the record, Mr. Morgan?

A J. W. Morgan.

Q Your address, please.

A 515 Northeast 178th Street, North Miami Beach, Florida.

Q Mr. Morgan, will you tell us what your official position is in the Teamsters organization?

A I am International Representative.

Q For what area?

A Of the Southern Conference area.

Q And what assignment, if any, have you had in respect to the contract negotiations between the Teamsters and citrus companies here in Florida?

A I have attended many of the citrus negotiations, and particularly one on January 28 involving this particular company.

Q And at whose request did you attend that meeting on January 28? How did you come to attend that meeting?

[752] A I was requested by our International Union.

Q And what was your assignment at that time?

A My assignment was to come in and if possible, reach an agreement and settle the contract.

Q Now then, will you relate for us your recollection of what occurred at the January 28 meeting, between the Teamsters committee and the representatives of the company? First, tell us who was there on behalf of the company.

A Well, there was Mr. Bowden, Mr. Stephenson, I believe there was a man there by the name of Mr. Walker, and there were three foremen, if I remember right, which I don't recall their names.

TRIAL EXAMINER:

Three foremen for the company?

THE WITNESS:

Right.

Q Was there a Mr. Chelette there?

A Yes. And a Mr. Mc — I think his name was McVay.

Q And who was with you?

A We had Tom Owens, who is an International Representative out of Washington, head of our Produce Division; we had David Wingate, Chet Burgess, Melba Blair — there were four, three or four more that I just can't recall their names. I can point them out but I can't recall their names.

Q All right. Now then, what time did the Union representatives appear at that meeting?

A We appeared at 10 o'clock in the morning.

[753] Q And where was the meeting held?

A At the hotel in Lake Wales, the Walesbilt.

Q All right. And what time did the company representatives appear?

A The company representatives appeared about 11 o'clock.

Q All right. After the company representatives appeared, made their appearing at the meeting place, will you just describe for us what occurred then?

A We sat there for about thirty minutes after 11 o'clock, with neither party making any move to open negotiations. The way the room was situated, the head table appeared to be that of the company, and we expected them to open negotiations. Nothing was ever said for about thirty minutes, so finally I asked the company if they were prepared to start negotiating.

Q And who replied?

A Mr. Bowden replied that he had been ready since 11 o'clock.

Q All right, take it from there and tell us what you recall, how the meeting went.

A I asked them what the specific differences were as far as the contract was concerned, and what was preventing us from reaching an agreement? Mr. Bowden informed me that I should refer to my notes to determine what the differences were. I told Mr. Bowden that there wasn't any use referring to the notes, because their contract proposal had been withdrawn and there was nothing to consider; that we were there with the [754] intention of settling the agreement, our people were out on strike and we wanted a settlement if it was at all possible. We would like to know the specific differences separating us so we could reach an agreement.

Q Go on. What did Mr. Bowden say? Did he make any reply there?

A Mr. Bowden made several replies; that we had had different negotiators there, and we should have notes on the company proposal in our files. We did have part of a company proposal, and we asked him to furnish us with the entire company proposal. He said he didn't have any extra copies. We sent one of our committee men out to get one; they claimed they had one at home; and they returned with a copy.

We commenced to negotiate; I pulled out the last Union proposal and the company's proposal and attempted to start with the Union proposal, Article by article. Mr. Bowden objected that this was a waste of time, that it had been done previously time after time.

Q With respect to the Union's third proposal?

A Right. He also objected to going over the company's proposal, on the same basis, that it was a waste of time. So we attempted to start with our proposal, and discussed the preamble and Article I. We got nowhere at all, and ended up by having to accept the company's decision to work on their proposal. Se we started then with the company proposal.

[755] Q Were you in possession at that time of the copy of the company's proposal which had previously been used by David Wingate during the negotiations?

A Yes, I was.

Q Mr. Morgan, during this January 28th meeting who did the speaking principally for the union?

A I did.

Q Did you make any notations during the course of that meeting?

A Yes, I did. I made them on the contract itself.

Q I am handing you now the file of original exhibits,

and direct your attention to the company's proposal, which is received as General Counsel's Exhibit 14-B, and ask you to simply, as you review that contract proposal, give us your recollection as to what the conversation was, what the remarks made back and forth concerning each one of those provisions were.

A We started off with the first page "Agreement." We agreed to that, the elimination of "AFL-CIO," which is the preamble.

Q First give us your recollection as completely and fully as you can, Mr. Morgan, as to whether there was any agreement that day, that is it had been agreed to in the past, or did you start in with negotiations concerning this particular section?

A We started in with negotiations.

[756] Q What did the company have to say and what did you have to say?

A We objected to "Local Union No. 173, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO." We asked to scratch the "AFL-CIO," and also insert "affiliated with" International Brotherhood of Teamsters.

Q What reply, if any, did either Mr. Bowden or Mr. Stephenson make to that request?

A They agreed to it.

Q All right.

A And Recognition of the Union, Article I, we discussed the proposal that the union had proposed. The company contended that this was the exact certification as outlined by the NLRB. We agreed to it.

The Management clause, Article II, we passed.

Q Was that by mutual agreement that you passed that up, or did the company want to discuss that one?

A We discussed it. The last sentence in there said that Management's rights shall not be subject to arbitration or the grievance procedure. We objected to that, and contended that although we recognized management's prerogatives, there should be a limit, and if there was an in-between matter it should be subject to arbitration and the grievance procedure. We passed that one.

Q All right.

[757] A They wouldn't agree to anything as far as management prerogatives being arbitrated.

Q With reference to Article III, Union Activity and Responsibility and Bulletin Board?

A We agreed to A of that article. On B we agreed except for a sentence in the old agreement for preferred hiring.

Q I don't understand with reference to paragraph B what your testimony is there, Mr. Morgan. Is that some modification?

A Yes, we asked for a modification. In our old agreement — I would need it to give you the specific agreement.

Q You mean the old A. F. of L. agreement?

A Yes.

MRS. FASSIG:

That is Exhibit 17.

A I have got it. It says in the old agreement, "Employees displaced by reason of such changes shall be eligible for preferred hiring in such jobs as they may be qualified to perform."

TRIAL EXAMINER:
What article?

THE WITNESS:
That is Article II, Section (d), the last sentence.

Q What does that have to do with paragraph B of this Article III that you were negotiating on?

A We asked that it be inserted.

Q And was there agreement on that?

A Because, you see, B of this article says, "As exclusive bargaining agent of the employees, the Union acknowledges its responsibilities and agrees that it will support the efforts of [758] the company in promoting improved methods of operation at the lowest possible cost consistent with fair labor standards." So in improving conditions it may mean elimination of specific jobs, which we asked that they have preferred hiring on other available work according to seniority.

MRS. FASSIG:
All right.

TRIAL EXAMINER:
Was it agreed to?

THE WITNESS:
It was not agreed to.

Q Then was there any agreement reached on paragraph B without adding that sentence?

A We agreed to what was there, with the exception that we wanted some additional language on preferred hiring.

TRIAL EXAMINER:

I understood you to say the company did not agree on that latter?

THE WITNESS:

They did not agree on the latter, on preferred hiring. They did agree to what they had already proposed, which is the language of B.

Q Then did you agree to use the language of B?

A Yes, provided we could add the preferred hiring.

Q (By Trial Examiner) So there was no agreement?

A There was no agreement on the preferred hiring, there was not.

Q There was no agreement on B.

A Bitterly I would say there was no agreement.

Q (By Mrs. Fassig) On the next paragraph, paragraph C, what [759] was the discussion on that one?

A We agreed to that article. There was quite a bit of discussion on the Bulletin Board, and we eventually agreed to it.

Q All right. Now the next article, Article IV, was that discussed by you folks on that day, January 28th?

A No, it was not. We passed it up, because it was a money item.

Q I ask whether or not at the beginning of this meeting of January 28th there was any discussion as to whether the parties would negotiate with respect to money items?

A Would you ask that question again?

MRS. FASSIG:

May I have the Reporter read it back?

(Question read.)

A There was no specific discussion. We passed it until later, hoping that we could get the balance of the agreement worked out, because we knew this would be a possible problem.

Q Well, before you negotiated with respect to this contract proposal, Exhibit 14-B, had there been any other request by you to negotiate with respect to any other proposal or any other offer of a contract by you to the company?

THE WITNESS:

You had better read that one back to me.

(Question read.)

A I don't believe I understand the question.

Q Well, had there been any discussion or request by you of [760] the company to go down and discuss, negotiate, the union's third contract proposal which had been mailed to Mr. Stephenson by David Wingate?

A That was the last contract proposal?

Q Yes.

A Yes, there had.

Q Well, what was said in that connection?

A They said it was no use going over our proposal.

Q Do I understand that they refused to discuss any of the individual provisions of that contract proposal?

A We brought up points — We had to discuss from the company's proposal. We brought up points from our last proposal which we wanted inserted in these particular articles, and we didn't get anywhere at all with them.

Q Was any reference made to the former contract that has been referred to in this hearing, the A. F. of L. con-

tract, the Citrus Workers A. F. of L. contract with the company?

A Was there any reference?

Q Yes.

A Yes, there was.

Q When was that?

A At one point, in Seniority, involving also Article V, Transfers, we got into an argument with Mr. Bowden with reference that he didn't even believe in the proposal that he had presented.

Q Is that what he said?

[761] A No, we accused him of that, because under Seniority — Let me find that article, please.

Q Is that Article VIII?

A This is E of that article. "Vacancies occurring through discharge, quitting or transferring shall be filled in the following manner: Employees with the longest continuous service shall be given preference of a job that might be open in his or her department, provided they possess the necessary skill and ability to adequately handle the job."

When we got to that part we referred him back — this is his proposal — we referred him back to Article V, Transfers, and the last sentence in Article V, Transfers, says, "Transfers shall be the exclusive prerogative of the employer." Therefore we told him that we can agree to Article V providing that you eliminate the last sentence, "Transfers shall be the exclusive prerogative of the employer." And here in Seniority you have offered that "Vacancies occurring through discharge, quitting or transferring shall be filled in the following manner: Employees with the longest continuous service shall be given

preference of a job that might be open in his or her department," provided they have the necessary skills. So therefore I said that he was not consistent, and if he wanted to reach an agreement, that we could agree on Article V eliminating the last sentence, "Transfers shall be the exclusive prerogative of the employer."

[762] He didn't agree to that, and he said that wasn't his interpretation of Article VIII, Seniority, either, although it says "transferring" very big.

Q In this connection, was there any reference to the former Citrus Workers A.F. of L. contract?

A Yes, ma'am. We asked him during this conversation, when we were arguing the merits of his proposal, would he be agreeable to the old agreement that they had been working under and the wage proposal that they had offered. They said no, there were some things they wanted to change.

Q Do I understand that there was no agreement reached on Article V, Transfers, because the company would not agree to the deletion of the last sentence from that article, is that correct, that "Transfers shall be the exclusive prerogative of the employer"? They would not agree to delete that sentence?

A They would not.

Q All right. Will you proceed to the next article, "Reporting Pay." Do you remember what the discussion was on that Article VI?

A Yes. We proposed our final agreement, which called for four hours pay if a person is called up to work, the compensation in lieu of going to work of four hours. They had proposed two hours in Section (a). In order to compromise we offered to accept three hours on reporting pay,

and also three hours pay on notification to report for work. It was not agreed to.

[763] TRIAL EXAMINER:

It was not?

THE WITNESS:

It was not agreed to.

Q Are those your notations at the bottom of that page?

A Yes, they are.

TRIAL EXAMINER:

What about at the top?

THE WITNESS:

The top is not my notation.

Q Turning back to the page on Transfers, Article V, do you have any notes on that page?

A Article V? Yes, I do.

Q What is your notation?

A "(Cannot agree) Proposed Seniority and ability." And I have got, "Transfers shall be the exclusive prerogative of the employer," the pencil marks over that are mine.

Q All right. Have you completed your testimony regarding what the conversation was or negotiations concerning Article VI, Reporting Pay?

A Yes, I have.

Q Now next, Article VII, Holiday Pay. Was that discussed, or what was said in connection with that article?

A It was passed over as being a monetary item.

Q All right. Now then, next is Article VIII, the Sen-

iority article. What do you recall were the negotiations that day on that article?

A At this point we skipped over Seniority and went to Arbitration. No, we went on to Article IX, Probationary [764] Employees, at this time, and we came back to it later.

Q All right. Go on to Article IX, then, regarding probationary employees. What was the discussion regarding that article? Did either the Union or the company request any change being made in it, the way it was contained in the company's proposal?

A It seems like in previous negotiations they had agreed, and it is written on the bottom of this page in ink, "Agreed that seniority shall be determined alphabetically in cases where more than one employee is hired on the same day."

TRIAL EXAMINER:

Who wrote that on there?

THE WITNESS:

That I don't know. It was done in previous negotiations, and we agreed to it.

Q Was there any reference or discussion regarding that particular provision during this meeting on January 28?

A Well, in the second sentence from the last, "the company shall have the right to fix and determine their seniority," that was marked out. This was done also, according to Mr. Bowden, in previous negotiations.

Q All right. What was said about that during this meeting on January 28? You told us that you negotiated regarding this particular article; following immediately after discussion or after passing the one on Holiday

Pay that you next took up this Probationary Employees article. What was the discussion that you can recall relating to this one?

A Well, after the new language we agreed to it. This had [765] already been discussed by past negotiators and had been agreed to.

TRIAL EXAMINER:

As written there?

THE WITNESS:

Yes, with the deletion that I have outlined.

TRIAL EXAMINER:

That is one thing that puzzles me, because after you read that deletion there appeared to be an incomplete sentence left in the text.

THE WITNESS:

Well, it says, "In the event the company shall employ more than one person at the same time, then it is" — and you cut out from "the company shall have the right to fix and determine their seniority" — "then it is agreed that seniority shall be determined alphabetically in cases where more than one employee is hired on the same day."

TRIAL EXAMINER:

I see. That is to be inserted for the deleted portion.

THE WITNESS:

That is right. Instead of the company fixing it it goes alphabetically.

TRIAL EXAMINER:

All right.

Q Then what article did you take up next?

A Article X, on No Strike or Lock-out, was not agreed to.

Q Was it discussed?

A Yes, it was.

Q Did the union agree to leave that article out of the contract?

A No.

[766] Q You did not agree to the deletion of that clause, that article?

A It was not proposed to us to delete it.

Q All right. When did you take up Article VIII, regarding Seniority?

A It was after we had gone on, skipped Vacations as being a monetary item, and went into Article XII, Grievances.

Q All right. What was the discussion regarding that article?

A This was quite a discussion involving Grievances. We consented to quite a few of the company's demands.

Q What were they?

A On employees being allowed to process their own grievances.

Q Which provision are you referring to? Are you referring now to Article XIII?

A That may be. Let me check over Article XII. (Examining document) Yes, I am. It is actually an article in itself.

Q Did you say that agreement was reached on Article XIII?

A Yes.

Q (By Trial Examiner) Whose note is that in the upper left corner?

A That is mine.

Q What does it say?

A "Tentatively agreed."

Q What do you mean by "Tentatively agreed?"

A We were notified by the company that anything that they [767] done in this meeting was merely a tentative agreement, and would not be an agreement until such time as the entire contract was settled.

Q You didn't write "Tentative agreement" on the rest of the places where you have got "Agreed," did you?

A They must have specified it thoroughly in that case; that is why I put it "Tentatively."

Q Does that mean the company tentatively agreed to it or the union tentatively agreed to it?

A We tentatively agreed to it together.

Q Both sides tentatively agreed to it?

A Right.

Q (By Mrs. Fassig) Now then, directing your attention back to the preceding article, the one on Grievances, was that discussed more or less in conjunction with the one you just testified was agreed to?

A Yes.

Q All right. What can you recall and tell us concerning the discussion on the Grievance article?

A On the Grievance article, Mr. Bowden and myself got into quite an argument with reference to the decision of the arbitrator selected by both parties being binding and final. He wanted, after the arbitrator had made a decision, that if he thought it was unjust he would have the right to go to court and spend more time in the settlement of the

dispute, rather [768] than make the arbitrator's decision final and binding.

Q Was there any provision for that in this paragraph (f) of Article XII?

A I will have to read the entire article to find out.

TRIAL EXAMINER:

(f) deals with arbitration.

Q Are you finished reading that on arbitration yet?

A Yes.

Q All right. Now from your testimony a few minutes ago do I understand that Mr. Bowden wanted to add something to this arbitration provision or change this in some way?

A Yes, he said that his firm had been instrumental in passing a state arbitration law whereby in the event that the arbitrators did not rule where he thought it was right, he wanted to insert that they had the right to use the courts under this new arbitration law.

Q (By Trial Examiner) Did he say when it was passed?

A I don't remember the specific date, but he mentioned that it was just prior to this sometime.

Q Just a short time?

A Yes.

Q Possibly after he submitted the original proposal?

A That I don't know, because I don't know when the law was actually passed. It hadn't been on too long, I am sure.

Q Well, do you know when his proposal was submitted?

A This one here?

[769] Q Yes.

A No, I don't. I know that I got it the first time on January 28th, at this meeting.

Q (By Mrs. Fassig) Mr. Morgan, was there any other — First was there any agreement reached between the union and the company with respect to the Arbitration provision of the article, Section (f) on Arbitration?

A No, there was no agreement reached on that.

Q For what reason?

A Because we felt that the arbitrator, once he made a decision it should be final and binding, and we didn't want to go to the expense of court action just because the company felt that it was against them, the arbitrator had ruled against them.

Q (By Trial Examiner) Will you look on the first two pages of that article and tell me whose notations are written into the body?

A I don't know.

Q Look on the second page. Does the same hold true?

A Yes.

Q They are not yours?

A They are not mine.

Q (By Mrs. Fassig) Well, I will ask whether or not the union expressed, whether or not there was any agreement on the arbitration section of the proposal as far as it is here, without the addition or the change or modification that Mr. Bowden [770] proposed that the union objected to?

A We would agree, or we agreed to the Arbitrator's decision being final and binding, which this called for originally.

Q Well, did you have any other objection to this Arbitration provision of the company's proposal?

A We objected to the language that "Such fifth arbiter shall be a resident of the state of Florida or a bordering state," but we finally agreed that it didn't make that much difference.

Q All right. Do I understand that you don't recall any discussion between the parties that day with respect to all of the other provisions of this Grievance article?

A Everything was all right with the exception of his addition.

Q Then is it your testimony that the parties did review the provision for the Shop Committee and the grievance procedure, and agreed to it, with the changes as indicated on the contract before you?

A Yes.

Q All right. Now what was the next article taken up by the parties there? Is that when you took up the Seniority article?

A Well, let's see. We have gone through Article XIII now, prior to this Arbitration. We went to that. Then we went to Leave of Absence, Article XIV.

Q All right. Do you have any notations with respect to Article XIV that you made yourself?

[771] A Yes, I do.

Q What are your notes?

A I have got in the upper left hand corner, "Copy received by Union. Agreed." On the bottom of the first paragraph, "Copy of leave to Union."

Q Those are notations made by you?

A Yes.

Q At the meeting?

A Yes.

Q What was the discussion with reference to the Leaves

of Absence, the first paragraph of that article? Was there an agreement reached on that first paragraph?

A Yes. The entire article was all right, with the exception that we wanted a copy of the leave of absence to come to us, to verify such leave of absence, and they agreed.

TRIAL EXAMINER:

What does that note in the upper left hand corner mean, "Copy received by Union?"

THE WITNESS:

That was one of our requests to add to this article, that a copy of the leave of absence be given to the Local union.

TRIAL EXAMINER:

You add that at the end of the paragraph. I am talking about the notation in the upper left hand corner. Do you know what that meant?

THE WITNESS:

"Copy received by Union" means the same thing. "Copy of leave of absence to be received by the Union."

[772] TRIAL EXAMINER:

Did you write that note?

THE WITNESS:

Yes.

TRIAL EXAMINER:

All right.

Q All right, what was the next article that you then took up for discussion?

A This is when we went back to Seniority.

Q All right.

A And this is where we got into the big argument, the company presenting one thing and meaning another, and that was through (e), where we tried to point out to the company that their proposals were in conflict with each other, and me and Mr. Bowden got into a pretty heated argument over their sincerity in saying in one place they are going to do something and in another they won't.

Q Well, was any agreement reached with respect to the provisions of this article?

A No, there was not.

Q Not any of it?

A We even got into a discussion on the interpretation of what that meant.

Q Of what what meant?

A (e) of Article VIII, Seniority, which states, "Vacancies occurring through discharge, quitting or transferring shall be filled in the following manner:"

Q (By Trial Examiner) Who made the notes appearing in the [773] body of this article?

A I don't know.

Q Were they on there at the time you were negotiating in this negotiation meeting on January 28?

A Yes.

Q What is the note on the first page, beginning "Agreed" and so forth? Is that yours?

A "Agreed to book language"?

Q Is that your notation?

A Yes.

Q What does it mean? By the book are you talking about the former AF of L contract?

A Yes, I am.

TRIAL EXAMINER:

Exhibit 17.

MRS. FASSIG:

Yes, sir, he is looking at that.

Q Does it mean that you agreed to the language in the former contract?

A No, it does not.

Q Does it mean that the Union was willing to agree to the language in the former contract?

A Yes, it does.

Q Was the company willing to agree to that?

A No.

Q What was it willing to agree to?

A At this point we never did get to a point of agreeing or [774] disagreeing on this, because we got into an argument on the sincerity of the company's proposal compared with Article V, Transfers.

Q How did you end up the discussion?

A Well, it got to a point of lull, where me and Mr. Bowden were spatting off at each other, back and forth.

Q Do you call that a lull?

A They got up, and it was about three o'clock. Mr. Stephenson said that he had to go to the plant, he had some things he had to do; so they took their little bags and walked to the door.

Q So you ended the meeting of January 28th with this lull on Seniority, is that right?

A Right.

Q (By Mrs. Fassig) Will you continue describing what happened towards the end of this meeting, Mr. Morgan?

A When they got to the door we asked them — I was speaking to Mr. Bowden at this point — I asked Mr. Bowden if we could possibly meet that night, we were making some progress, and that we were very interested in settling the agreement, and we would like to spend as much time as we could in negotiations to get it out of the way. Mr. Bowden said that they couldn't meet that night, that they were leaving early because Mr. Stephenson had to get to the plant, and he couldn't continue without him.

I then asked him for a meeting the next day. He said they [775] couldn't meet the next day, he had other plans. I said, "Is it possible to set up a future meeting at any date?" He said, "Not at this time," that we would just have to wait until they contacted us for a tentative date; and they strode out of the room.

* * * *

CROSS EXAMINATION

Q (By Mr. Bowden) Mr. Morgan, in reference to this meeting on January 28, did I understand you to say that you went up to the hotel at 10 o'clock and we came in at 11?

A That is right.

* * * *

[776] Q (By Mr. Bowden) Mr. Morgan, you also made a statement that our contract had been withdrawn. Was that ever done to you [777] personally, or what do you know about that personally?

A All I know is what our business agent, David Wingate, told me, that —

Q When you said it was withdrawn you are speaking from hearsay information that you got from Mr. Wingate, is that right?

A I am speaking of what Mr. Wingate told me.

Q I see.

A And you didn't deny it that day.

Q Deny what?

A That you had withdrawn the agreement.

Q As a matter of fact didn't we discuss the agreement, that November 23 agreement first, Mr. Morgan?

A November 23 agreement?

Q The last, the third agreement that the Union furnished us.

A We attempted to discuss it and you wouldn't discuss it.

Q Didn't I point out to you the changes that they had made in that agreement, that we had previously agreed to?

A In our third agreement?

Q Yes.

A No, you didn't.

Q Was that not the reason we went back to the original agreement, so that we could ascertain what had been agreed to back when Mr. Roberts was the negotiator for the Union? What was the purpose of going back to this company proposal?

[778] A Because that is the only one you would discuss.

Q And I had refused to discuss any other proposal, other than this one, is that right?

A Only at times, when we brought our position into your article, trying to insert portions of our proposal into your article, you would discuss them but you never would agree.

Q Did I tell you that I wouldn't discuss any proposal other than my original company proposal?

A Yes, you said there wasn't any use talking of our proposal. We attempted to do so.

Q Well, which proposal are you talking about?

A I am talking about the last proposal that the Union presented you, which we had that day.

Q Did you attempt to discuss the proposal of October 9th?

A I don't know what date the proposal is listed in your record. It is the last proposal that the Union presented you.

Q As a matter of fact, Mr. Morgan, didn't we go over this proposal of ours, the original proposal, with the thought of seeing what agreement had been reached with Mr. Roberts that you didn't know about?

A Right.

Q All right. So as a matter of fact, getting back to this General Counsel's Exhibit 14-B that you have been testifying from, did we not start from the first and I told you that on May 21, 1957 Mr. Roberts had agreed to that with the word [779] "affiliated" added, and you then wanted "AFL-CIO" taken out, because of the fact that you had been then, shall we say, ousted from that organization?

THE WITNESS:
Let me find it.

TRIAL EXAMINER:
14-B, the first page.

THE WITNESS:
All right, give me that again.

MR. BOWDEN:
The Reporter will read it to you.

(Question read.)

A That is correct. However, our contract proposal had nothing written in about "affiliated with" being in there.

Q All right, sir. Then in the Recognition clause, did I not at that time advise you that that had been agreed to on May 21, 1957, with Mr. Roberts as written?

A I don't remember you informing me of that. However, you said it was in accordance with the NLRB certification.

Q And with the previous agreement with Mr. Roberts?

A I don't remember that portion. I told you if it was in accordance with the certification we would agree to it.

TRIAL EXAMINER:
What is that notation in the upper left corner?

THE WITNESS:
It looks like J A-g-r. I don't know whose notation it is.

TRIAL EXAMINER:

It is not yours?

THE WITNESS:

No, it is not.

Q In reference to Article II that you testified about, which [780] is the Management clause, did we not, after a discussion, pass that?

A We sure did.

Q All right.

A After much discussion.

Q And the reluctance on your part to put any language in in reference to Management Rights, isn't that correct?

A No, the reluctance of the company not to make Management Prerogatives, where they conflicted, subject to the grievance procedure.

Q All right. Now passing on to Article III that you testified about, didn't I advise you at that time that on May 21st Mr. Roberts had agreed to A and B in that Article III?

A You did.

Q And on January 28th, which is this meeting which we are discussing, we agreed on C?

TRIAL EXAMINER:

Before you leave A and B, are those dates there, May 21, 1957, in your handwriting?

THE WITNESS:

Yes. And we discussed in that the old agreement on preferred hiring, which I have previously testified about.

Q Yes, but we had previously agreed, on May 21, 1957, on B as written?

A I have to assume that. That is what you said.

Q Yes.

A You didn't agree with me, you agreed with John Roberts.

[781] Q You were attempting to change an agreement; that was my objection, wasn't it?

A No, that was not the objection at all. The thing that happened was that John Roberts was no longer with us, the company proposal had been withdrawn, there was no possibility of changing an agreement as none had been proposed, and I so stated to Mr. Bowden that day.

Q All right. Then passing on to Article IV, Wages and Hours, we passed that, as you said, because it was a cost item, did we not?

A That is right.

Q Now I don't get the reference in your testimony to Article V, Transfers, your position any better today, Mr. Morgan, than I got it when we discussed that on January 28th. I never could, as I recall, explain to you the difference between a vacancy created by a transfer and a transfer itself. Do you still contend that they are the same?

A No, I certainly don't.

Q Well, don't these two articles, then, one deal with a transfer and one deal with a vacancy because of a transfer?

A It sure doesn't.

MR. BOWDEN:

There is no use, then, to go into that again. I won't get into it again.

TRIAL EXAMINER:
Gentlemen, let us continue the negotiations here.

[782] MR. BOWDEN:
Yes.

THE WITNESS:
All right.

TRIAL EXAMINER:
Anyway, you didn't agree on it, did you, Mr. Witness?

THE WITNESS:
On Article V, Transfers?

TRIAL EXAMINER:
Right.

THE WITNESS:
We didn't agree to it.

TRIAL EXAMINER:
Will you look at the note there right after the words, "Can't agree"; is that yours?

THE WITNESS:
Yes.

TRIAL EXAMINER:
What does it say?

THE WITNESS:
It says, "Can't agree. Proposed seniority and ability."

TRIAL EXAMINER:
I see.

THE WITNESS:
In other words, transfers would be made according to seniority and ability.

Q Didn't I advise you at that time on Article VI that that had been previously agreed to except as to hours? That was on May 21.

A I don't remember. I don't believe you did, but I can't say.

Q (By Trial Examiner) Isn't that note at the bottom in your handwriting?

A That sure is, but he said with the exception of hours, in his question to me.

[783] Q Well, isn't that approximately what your note down there says?

A Well, he asked me the question, Mr. Examiner.

MR. BOWDEN:
The Reporter will read it back.

(Question read, "Q Didn't I advise you at that time on Article VI, that that had been previously agreed to except as to hours? That was on May 21.")

THE WITNESS:
Right.

TRIAL EXAMINER:
Answer; will you read the answer?

(Answer read, "A I don't remember. I don't believe you did, but I can't say.")

THE WITNESS:

I know we did discuss the article, but I don't remember him informing me of that.

Q (By Mr. Bowden) Now, under Holiday Pay, which is Article VII, that was passed on the 28th without a discussion, was it not; or it was passed as a cost item, wasn't it?

A Article VII was.

Q With reference to seniority, which is Article VIII, that was passed by consent, as I recall, after a discussion of it.

A Right.

Q Now, does your note show and did we add anything at that time?

MRS. FASSIG:

Which article?

MR. BOWDEN:

That same article VIII.

THE WITNESS:

What was the question again?

[784] Q Does your record indicate that you made any notations on that page in regard to deletions or additions to the language?

A No, those are not my notes, although there are deletions in ink, different changes made.

TRIAL EXAMINER:

And I believe you told me they were on there at the time of the meeting.

THE WITNESS:

Right.

Q I will ask you in regard to Article IX, which is Probationary Employees, if I did not advise you that that had been agreed to as changed on June 4, 1957, the change being, "Seniority shall be applied alphabetically," and the words then "It (the company) shall have the right to fix and determine their seniority" stricken?

A That is the agreement, right.

Q Now in reference to Grievances, which appears in Article XII, I will ask you if you were not advised at our meeting on January 28th that (a) the preamble as changed, Step 1, Step 2, Step 3, paragraphs (d), (e) and (f) had been agreed to as written on June 4, 1957?

A No, I was not.

Q You don't recall that, Mr. Morgan?

A I do not.

Q I will ask you if you did not propose the change in the Arbitration yourself, Mr. Morgan, and this was your proposal on January 28th, that you wanted the Arbitration clause changed [785] so as to be able to arbitrate the proposition of whether a question was arbitrable or not; do you remember that?

A No.

Q You don't recall any conversation on that?

A No.

Q We would not agree to make a change? You don't recall that?

A No.

Q To provide whether a question was arbitrable; you don't remember?

A No.

Q Now in reference to Leaves of Absence, which appears as Article XIV in that agreement, I will ask you if you were not advised at that time that that complete section had been agreed to on June 4th as written, with certain changes in the first paragraph and a pencil addition to the end of it?

A To the first paragraph?

Q The first paragraph, as "The names of such persons on leave of absence shall be furnished by the company to the union."

A You must have a different contract than I do.

Q Are you on Article XIV, Leaves of Absence?

A I sure am.

Q You don't have those notations?

A No, I don't.

Q Do you have any written notation at the end, following the printed portion?

[786] A Yes, I do.

Q What do you have there?

A "Copy of leave to Union."

TRIAL EXAMINER:

You are just on the first section, Mr. Witness. Turn over to the last page.

THE WITNESS:

That is what he said, the first paragraph.

TRIAL EXAMINER:

He is talking about the last page at the moment. Turn to the end of it.

THE WITNESS:

"Employees on maternity leave"?

MR. BOWDEN:

No. Read the question, please, Mr. Reporter.

(Question read, "Now in reference to Leaves of Absence, which appears as Article XIV in that agreement, I will ask you if you were not advised at that time that that complete section had been agreed to on June 4th as written, with certain changes in the first paragraph and a pencil addition to the end of it?

"A To the first paragraph?

"Q The first paragraph, as 'The names of such persons on leave of absence shall be furnished by the company to the union.' ")

THE WITNESS:

He said first paragraph, didn't he?

TRIAL EXAMINER:

And the end of it.

THE WITNESS:

All right, the end here of the first paragraph, I have got these notations —

TRIAL EXAMINER:

Turn to the end of the article again, please, sir, which is what he is referring to.

THE WITNESS:

I have no pencil notation.

[787] Q All right, sir. Then, will you turn to Article XV and see if we didn't negotiate on January 28 on Section C by our addition of the language that C did not include new jobs or operations, and that we agreed on that?

A Section C of what?

Q Article XV.

A What is the question again involving that?

(Question read)

A Yes.

TRIAL EXAMINER:

What do you base that on, Witness; your recollection?

THE WITNESS:

Yes.

TRIAL EXAMINER:

You have no notation there.

THE WITNESS:

No, I don't. I remember the conversation.

Q I will ask you then, on Article XV, continuing on Section F, if we did not agree on that on January 28?

A Yes.

Q Do you have a notation to that effect?

A No, I don't.

Q You recall that that happened?

A Yes.

Q And I believe you testified, Mr. Morgan, that at about that point or shortly later, the atmosphere in the bargaining room deteriorated rapidly, I believe is the nicest way I know to express it; didn't it?

[788] A Yes.

Q Didn't you make some uncomplimentary remarks in reference to the company negotiators?

A Well, uncomplimentary remarks? I would say some truthful remarks.

TRIAL EXAMINER:

They could still be uncomplimentary, couldn't they?

THE WITNESS:

I would say yes.

Q What did you say then, Mr. Morgan?

A It seemed like -- Do you remember what we were discussing at the time? It seemed like it was Arbitration, and we got to discussing the — No, it wasn't, it was Seniority, excuse me. And I said that the company didn't even believe what they had proposed on Seniority, or else they would change the last sentence in Article V to comply with the Seniority article.

Q Is that all you said?

A I said some more. Let me think how it came out. We wanted to arbitrate, where you wanted to go to court, and I accused you of all you wanted was to make a big show out of every grievance that came by, and to make a fee out of it, whereas the company and the union could sit down and work out before the arbitrator, let him make

the decision and both of us live by it, and I think you came back at me with something about the Fifth Amendment at the time.

Q Yes, and what was the lead-off on that? You accused us [789] of being dishonest, as I recall, about that time. Didn't you accuse us of being dishonest, and didn't I tell you that at least we hadn't taken the Fifth Amendment before the McClellan Committee for 57 times?

A No, the word wasn't "dishonest." It was an accusation that you were trying to keep your nose into labor relations after negotiation, by referring everything to court, and I informed you that I didn't think that was proper, that it became a company and union proposition on arbitration and should remain there after a decision was made.

Q To that didn't you correct me, and say that you hadn't taken the Fifth Amendment 57 times, that you had taken it only 54?

A That is right, that is correct.

Q And needless to say, from that point on as I put it, the relationship in the room was at a low ebb, was it not?

A It had been all the meeting.

Q Shortly thereafter we adjourned, did we not?

A That is right.

Q (By Trial Examiner) You didn't do any bargaining after that exchange, did you, Mr. Morgan?

A Sir?

Q You didn't do any bargaining after that exchange, did you?

A No.

[790] MR. BOWDEN:

I think that is all I have to ask him.

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LONNIE O'NEAL

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

TRIAL EXAMINER:

Now will you speak up, please ma'am, so everyone in the room can hear you.

THE WITNESS:

Yes, sir.

Q (By Mrs. Fassig) Will you give us your name, please?

A Lonnie O'Neal.

Q Will you spell the first name?

A L-o-n-n-i-e O-N-e-a-l.

Q And is that Mrs. or Miss?

A That is Mrs.

Q Mrs. O'Neal, what is your address, please?

A Postoffice Box 296, Dundee.

Q Mrs. O'Neal, are you an employe of the Florida Citrus Canners Cooperative?

[791] A Yes.

Q Have you been employed by that company during the past season?

A Yes, I was.

Q And were you a member of the Teamsters union before the strike, which commenced on January 17th this year?

A Yes, ma'am.

Q And were you present at a union meeting which was held on the evening of January 9th, 1958?

A Yes, I was.

Q Do you recall whether or not Mr. David Wingate, Business Agent of the union, made a report to the membership at that meeting?

A Yes, he did.

Q Will you tell us what the report was that Mr. Wingate made?

A Well, he had a copy of a proposal that the company had posted on the board at the plant, and of course we were all familiar with that, but he read it over to us; and then he also told us that after receiving that letter he called Mr. M. A. Stephenson and asked him what kind of a contract went with that, and that Mr. Stephenson told him no contract whatsoever.

Q All right. Then what occurred after Mr. Wingate made this report?

A Well, it was open for discussion, and we had quite a bit [792] of discussion. There were several people that got up and talked about it pro and con, and I can't remember just exactly who all got up, but Harold Dunaway was one, Bill Bowman, Jack Papps and several others, and as I say, I can't remember just exactly what they said, but it all led around to the fact that without a contract the wage offer would be no good.

Q Was there a vote taken on some proposition relating to the company's wage proposal?

A Yes, there was a vote taken on it.

Q Who made the proposal, do you remember that?

A Do you mean who voted to reject it?

Q Who made the motion to take a vote on it?

A Well, I am sorry.

Q What was the proposition you were voting on, then?

A Well, anything that comes up in our meetings, you know, we will throw open for discussion, and then someone makes a motion as to whether we accept or reject.

Q (By Trial Examiner) Well, who made the motion?

A I am not sure, but I believe it was Bill Bowman.

Q And what was the motion?

A That we reject the company's proposal.

Q (By Mrs. Fassig) Did you vote on that motion?

A Yes, I did.

Q And how did you vote?

A I voted to reject it.

[793] Q For what reason?

A Because we wanted a contract.

MRS. FASSIG:

That is all.

CROSS EXAMINATION

Q (By Mr. Bowden) Mrs. O'Neal, were you a steward in the sectionizing department?

A Yes, I was.

Q How many people were at that meeting on January 9th?

A Well, I couldn't tell you the number, but the house was practically full.

Q Well, how many would you estimate that?

A Well, I don't exactly know. I would say approximately around 60 or 70. Now I don't know how many people the building will hold, even.

• • • •

Q Did these 60 or 70 represent the employes from all sections of the plant?

A Well, I suppose so. I don't know everybody that works [794] for Florida Citrus Canners in the other plants.

MR. BOWDEN:

I have no further questions.

TRIAL EXAMINER:

Mrs. Fassig?

MRS. FASSIG:

I was just thinking.

TRIAL EXAMINER:

Maybe you can think better if I ask a question or two.

Q (By Trial Examiner) Did you go out on strike?

A Well, I guess I did. The plant wasn't in operation, the sectionizing department, the day of the strike, but I never returned to work, so I guess you would say I did.

Q Why did you go out on strike?

A Well, because I wanted a contract.

TRIAL EXAMINER:

Anything further?

MRS. FASSIG:
Nothing further.

Q (By Mr. Bowden) Did you go out on strike because the negotiating committee called a strike?

A Well, the negotiating committee did have that vote, you know, taken; we decided whether they would have authority, in other words, to strike if they wanted to; so I was like the rest of them, I wanted a contract, so —

Q I mean, so they called a strike, and that is the reason you stayed out, actually?

A Well, yes, I guess you would say so.

MR. BOWDEN:
That is all.

TRIAL EXAMINER:
Anything further?

[795] MRS. FASSIG:
Nothing further.

* * * *

MARGARET DUNAWAY
a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q (By Mrs. Fassig) Will you state your name, please?
A Margaret Dunaway.
Q And your address, Mrs. Dunaway?

A Route 2, Box 148, Lake Wales.

Q Mrs. Dunaway, were you a member of the Teamsters Local union before the strike which commenced on January 17th?

A Yes, ma'am.

Q Were you at the January 9th meeting?

A Yes, ma'am.

Q Do you recall whether or not a proposal which had been submitted by the company for a wage increase was submitted to the membership at that time, at that meeting?

A Yes, ma'am, it was. It was posted on the board, and then Davie got up and read the letter he had got and the wage proposal, and asked us what we wanted to do about it, if we wanted to accept it or reject it or what, and he said there was no contract to go along with that, just that wage proposal, and so we 100 per cent. rejected it.

[796] Q I ask whether or not Mr. Wingate made any report to the membership at that time regarding the negotiations which he had been conducting with the company?

A Yes, ma'am; he said they wouldn't — they refused to bargain or give us a contract, or do anything except that one wage proposal.

Q Did you participate in the vote taken at that meeting —

A Yes, ma'am.

Q — on the company's wage proposal?

A Yes, ma'am.

Q How did you vote, and for what reason?

A Well, I voted not to accept it, because what would a raise be without a contract? because maybe you would work two weeks with a raise and it is gone. You don't have a job then, either. If you don't have a contract you don't

have a job or a raise, except their word, and you don't get work on people's word.

Q Had you attended a meeting held in November, when authority was granted to the negotiating committee to call a strike?

A Yes, I think I was.

Q Do you remember that meeting?

A Yes, ma'am.

Q Do you recall who talked to the membership at that meeting?

A No, I don't really.

Q Did Mr. Wingate report at that meeting regarding the nego- [797] tiations up until the time of that meeting?

A Just let me think, it has been so long back. I don't really remember. I was there, I know, but like everyone, I was talking in between, and didn't get it all in.

Q Did you vote on the proposition of whether to give the negotiating committee authority to call a strike?

A Yes, ma'am.

Q For what reason did you vote to give them authority to call a strike?

A Well, because we need a contract, not a raise. We needed the contract more, and I thought they had everybody's — everybody else's opinion, too, and they had the right to go ahead.

TRIAL EXAMINER:

Speak up, will you please?

A (Continued) And we took their judgment for being as good as the rest of us, so —

MRS. FASSIG:
That is all.

CROSS EXAMINATION

Q (By Mr. Bowden) Mrs. Dunaway, how long have you worked for Florida Citrus Canners?

A Four years.

Q Four years?

A This was the fourth season.

Q How long had you worked prior to the strike?

A Well, about two and a half years, and I got off to have [798] a baby.

Q I mean, though, before the strike how long had you been back working?

A Well, from November.

Q What time in November?

A Well, around the first, somewhere between the 1st and the 15th, I think.

Q And you were at this meeting, voting to give the negotiating committee strike authority, as soon as you got back?

A Yes, sir.

Q Had you had a contract last season?

A No, I don't think so.

Q Didn't you make the statement that you couldn't work without a contract, or words to that effect, couldn't trust anybody?

A I didn't say you couldn't trust anyone. I said you don't work on people's word.

Q Well, you had been working on people's word —

A Yes.

Q — for a season or more, hadn't you?

A Yes, just about a season.
Q Had they ever taken anything from you?
A Yes, sir.
Q What?
A Well, they took my seniority when I was off.
[799] Q You were off how long?
A From January until the following November.
Q Didn't you get your job back when you came back?
A Not the same one, but I got a different job.
Q Was it an equal job to the one you had?
A Yes, sir, the same pay.
Q When did you first know about the strike?
A On the 17th.
Q How did you know about it?
A Well, I went down to report for work, and the strike was on.
Q I see. That was your first knowledge, when you went down to go to work and saw the picket line?
A Yes, but I knew we had been planning on it.

MR. BOWDEN:
That is all.
Q (By Trial Examiner) Did you stay on strike?
A Yes, sir.
Q Why?
A Well, because; I stayed to help win a contract, and —

TRIAL EXAMINER:
Anything further?
Q (By Mr. Bowden) Mrs. Dunaway, are you sure that your plant was even working on the 17th?
A No, sir, I wasn't working.
Q Why would you come down to go to work?

A I didn't mean to report for work; I am sorry, I was [800] mixed up. I took my father to work.

Q And that is the first knowledge you had of the picket line there?

A Yes, sir.

Q Or that there was a strike on?

A Yes, sir.

* * * *

NETTIE STENSIN

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q (By Mrs. Fassig) Will you give us your name, please?

A Nettie Stensin.

Q And Mrs. Stensin, give us your address, please.

A General Delivery, Dundee, Florida.

Q Mrs. Stensin, how long have you been employed by the Florida Citrus Canners Co-op?

A I think, if I am not mistaken, it is ever since 1948; it may have been 1947.

Q Mrs. Stensin, were you a member of the Teamsters union before the strike which started January 17th?

[801] A Yes, ma'am.

Q Were you at the meeting on January 9th of this year?

A Yes, ma'am.

Q Will you relate for us what occurred at that January 9th meeting?

A Well, as near as I can I will. Well, David came in and he read us the verdict of the company, what they had offered and everything, and he told us then about calling Mr. Stephenson after he got his letter telling him about the wage offer, and he called him and asked him what went with it, and he said "Well, that is it." "No contract?" He said, "No, no contract." And that was what we were interested in, a contract.

Q When you said David read you a verdict, I ask you did David read you a letter which he had received from Mr. Stephenson?

A Yes, ma'am.

Q The letter was transmitting the company's wage proposal to the union?

A Yes, ma'am.

Q That is what he read to you. I think you said then he told you about a conversation he had had with Mr. Stephenson?

A Over the telephone.

Q Do you recall anything else that David reported to you, or what else occurred then?

A Well, as best I can remember he said, "Now it is up to you [802] whether you accept this or not."

Q And then was there any discussion on the floor?

A Oh, yes, the floor buzzed for a while, and then we had two or three to get up, and Dunaway, I can remember, was one.

Q Which Dunaway; Margaret Dunaway, who just left the room?

A No, I believe his name is Hugh, isn't it?

Q I don't know.

A It is a short name.

Q A man by the name of Dunaway?

A Yes, it is Margaret's brother-in-law.

Q All right.

A And he — Well, he just didn't like it at all.

Q What did he say, in substance?

A Well, I don't know as I can tell you just exactly what he said, but it all led up to what would we have if we accepted that? We wouldn't have nothing worth while; no guarantee that it would last thirty days or three hours. They could do what they wanted to us without a contract.

Q Did you participate in the vote, then, that was taken?

A Yes, ma'am, I did.

Q What was the vote on; what was the issue?

A Well, to not accept the offer without a contract at all; not even consider it without a contract. We wanted a contract.

Q Did you vote on that, you said?

A Yes, ma'am.

[803] Q And how did you vote?

A I refused.

Q And for what reason?

A No contract, no — Well, they just refused us a contract, and that is what we wanted.

Q Did you take part in the strike?

A Yes, ma'am.

Q And why have you been participating in the strike?

A Well, to try to get what we think is rightfully ours, our contract, and to be recognized, and to be where we can deal with our company on things like we have been.

Q Well, Mrs. Stensin, I will ask whether or not you felt, on the basis of the reports which had been made to you by Mr. Wingate and the other members of the Local bargaining committee, whether or not the company had

been negotiating with your representatives in a sincere effort to arrive at a contract?

MR. BOWDEN:

To that I am going to object, your Honor. It calls for a conclusion. The first thing she asked her she put the answer in her mouth.

TRIAL EXAMINER:

May I hear the question?

(Question read.)

TRIAL EXAMINER:

That is leading, isn't it, Mrs. Fassig?

MRS. FASSIG:

I am afraid it is.

TRIAL EXAMINER:

I sustain the objection.

[804] Q Mrs. Stensin, I will ask you why you feel it is necessary for the employes to engage in a strike?

A Well, we wanted to be bargained with in good faith and we didn't get it, and without a strike — We were forced into a strike, I would say.

Q In what way?

A Well, the company refusing to bargain with us in good faith.

Q What is the reason that you arrived at that conclusion, Mrs. Steinsin?

A What caused us to arrive at it?

Q Yes, why did you think they were not bargaining with you in good faith?

A Well, they just didn't bargain with us at all, and they completely refused us a contract. Now would you think that was good faith?

TRIAL EXAMINER:

Just testify, please, ma'am. You are here to answer the questions, not ask them.

THE WITNESS:

Well, did I answer?

MRS. FASSIG:

That is all of my questions.

• • • •

[823] J. W. MONTGOMERY,

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q (By Mrs. Fassig) Will you state your name, please?

A J. W. Montgomery.

Q Mr. Montgomery, what is your address now?

A Route 2, Lake Wales.

Q How long have you been employed by the Florida Citrus Canners Co-op?

A Since December 1953.

Q Were you at the union meeting held on the evening of [824] January 9th, 1958?

A Yes, ma'am.

Q And will you tell us your recollection of what occurred at that January 9th meeting?

A Well, I recollect David reading that proposal that he got from the company, and he told us that is what they had offered him, and he said he had called Mr. Stephenson and asked did a contract go with that. He said No, that was it. That is about all.

Q Was there a discussion then from the floor, whether or not to accept the company's wage proposal?

A Yes, ma'am, they discussed it back and forth. About three or four of them got up and discussed it. I don't remember just what it was. We didn't any of us want to take the offer they had offered us without a contract.

Q Did anyone speak in favor of taking the wage offer without a contract?

A No, ma'am.

Q Did you participate in the vote which was taken at that meeting on the company's wage proposal? Did you take part in that vote?

A You mean in voting for it or against it?

Q Yes, did you vote at that meeting?

A For the offer?

TRIAL EXAMINER:

Either way, did you vote?

[825] Q Did you vote either way?

A Yes, ma'am, I voted.

Q For the offer?

A For not to take it.

Q Why did you vote that way?

A Because I felt like — I didn't think they had bargained in good faith for us to take it.

Q Why did you think they had not been bargaining with the union in good faith, Mr. Montgomery?

A Well, they hadn't been — I can't think of the word now — negotiating with the union like they should. That is about all I can think of.

Q Did the absence of any kind of a contract proposal to go with the wage offer have anything to do with your voting to reject the wage offer?

A Yes, ma'am, because it would have been a lot different if they had given us any contract with the offer that they had offered.

Q Mr. Montgomery, are you one of the company's employes who were served with eviction letters after you took part in the strike?

A Yes, ma'am, I got a moving letter.

Q Did you move from the company-owned property that you were living in?

A Yes, ma'am, I moved.

[826] Q You moved?

A Yes, ma'am.

Q When did you move?

A The 9th of May, the best I remember.

Q Were you able to find comparable rental property at equal rent, for equal rent with what you had been paying to the company?

A No, it didn't equal up; it was rather right smart higher than what they had.

• • • •

[832] MELBA BLAIR

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q (By Mrs. Fassig) Will you give your name to the Court Reporter, please.

A Melba Blair.

MR. BOWDEN:

Will you ask her if she was here the first morning?

MRS. FASSIG:

Yes.

Q And your address, Mrs. Blair?

A Postoffice Box 684, Lake Wales.

Q Mrs. Blair, were you here the opening morning of the hearing, the first morning of this hearing?

A I was here in the morning, yes.

[833] Q Were you here in the afternoon, after the Trial Examiner announced a rule excluding witnesses from the hearing room?

A No, ma'am, I wasn't.

Q You left at that time?

A Yes.

Q I will ask whether you have even been back in this building since then, until today?

A No, ma'am.

Q Mrs. Blair, what position do you hold in the Local union?

A I am Recording Secretary.

Q And in addition to being the Recording Secretary, are you a member of the union's negotiating committee?

A Yes, ma'am, I am.

Q Have you attended all of the negotiating meetings which have been held with the company representatives?

A Practically all of them. I think there might have been one, at least one, that I didn't attend, and there might have been two, but I know there was at least one.

Q Were you at the meeting which was held on December 18th?

A December 18th? Yes, ma'am, I am sure I was.

Q The one that was held after the first freeze affecting the citrus industry?

A Yes.

Q Mrs. Blair, were you at the union meeting which was held on January 9, 1958?

[834] A Yes, ma'am, I was.

Q What is your recollection as to how many of the members were present at that meeting?

A Well, I would assume between 60 and 75.

Q That meeting was held at the City Hall?

A Yes, ma'am.

Q Is that where all the meetings were being held?

A Yes, ma'am.

Q And Mrs. Blair, will you relate what happened at that meeting? Tell us your recollection in regard to the company's wage offer.

A Well, as I remember it, David had a letter that he had gotten from Mr. Stephenson, which we also had one on the bulletin board at the plant. We had had that put on the bulletin board, I believe, I am not sure whether it was that day or not, but anyway he had a letter just like it he had gotten from Mr. Stephenson, and he read it to

the people, which had the wage proposal which the company had offered the people.

Q What did David do with the letter?

A Well, he read it to the people, and explained to them that it was without any offer of a contract whatsoever.

Q Did he make any further report on any conversation he had had with Mr. Stephenson?

A Yes, ma'am. I believe he said that he had called Mr. Stephenson after he had received the letter and asked him if [835] a wage proposal came with it — I mean if a contract came with the wage proposal, and Mr. Stephenson told him no, that there was no offer of a contract.

Q What happened after David made that report to the membership?

A Well, there were several discussions on it. The people discussed it, and I don't remember just how many got up and talked about it, but there were several, and they finally brought it to a motion and the majority of the people voted to reject.

Q Did you yourself take part in that vote?

A Yes, ma'am.

Q Did you vote?

A I did.

Q How did you vote?

A I voted to reject it, because it had no offer of a contract.

Q Mrs. Blair, you testified that you were a member of this negotiating committee and had been attending the meetings. Had you formed any conclusion as to whether or not the company was making a sincere effort to arrive at a contract with the union?

A Well, since we had been negotiating for months and

we hadn't come to any agreement whatsoever as far as anything was concerned definitely, well, I didn't feel like they were bar- [836] gaining in good faith, no.

Q Had you been at the meeting when the membership voted strike authority to the negotiating committee?

A Yes, ma'am, I was there.

Q Can you tell why the membership voted to give the negotiating committee authority to call a strike?

A The people voted to give the negotiating committee the right to call a strike because they felt like we had been negotiating for a contract for months and hadn't received an agreement, and they didn't think the company was bargaining in good faith.

Q Since the strike commenced have you taken part in the strike?

A Yes, ma'am.

Q Have you participated in it?

A Yes, ma'am.

Q Why have you been on strike against the company?

A I have been on strike because I want a contract, and I didn't feel like the company was bargaining in good faith.

* * * *

[862] RAYMOND E. SHERRER

a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q (By Mr. Bowden) Have a seat there, please. Will you speak loud now, so the Reporter can clearly hear you, as well as the Trial Examiner, sir; and will you spell your name and give your address.

A Raymond E. Sherrer, S-h-e-r-r-e-r. The middle initial is E.

Q Are you employed by the Florida Citrus Canners Co-op?

A Yes, sir, I am.

[863] Q What was your occupation on January 17, 1958?

A I was working in the sectionizing plant.

Q Are you a member of the Teamsters Union?

A No, sir.

Q Were you a member of the Citrus Workers Union?

A Of the union beforehand?

Q Yes.

A Yes, sir.

Q Did you have a part in the circulation of a petition that was circulated among the employes of the Florida Citrus Canners Co-op?

A Yes, sir.

Q What do you know about the preparation of the petition, Mr. Sherrer?

A Well, the day that the proposal was put on the board that the union had turned down our raise, the proposal that the company had made, there was myself and one more employe was talking about it, and I said, "I think we had better circulate a petition and see how many of the employes feels the same as we do, see if they want the Teamsters to represent them or not." So we prepared the

petition; the other man, he prepared it, and I circulated the petition, which we done it on our own. No one asked us to and no one asked us not to.

Q Would you mind identifying who the other man is?

A Mr. Clyde Lanier, of Frostproof.

[864] Q Mr. Sherrer, I hand you General Counsel's Exhibit 2, pages 1 through 18, and ask you to examine that and see if you can tell us what that is. There are other pages there, so you can turn them.

A Yes, sir; this is the petition that we prepared and circulated.

Q Who did the writing on the petition?

A Well, these right here was fixed throughout the plant, which in circulating the petitions the ones that circulated them run out of space and these were brought up, which on this signature here I wouldn't be able to say.

Q In other words, as I understand your testimony, the original petitions, when they ran out of space someone would write in the new heading and they would get the signatures under that new heading, is that right?

A Correct. In other words, this on the "Hours of Week" was printed, and these was wrote, and the old petition, the one that Mr. Lanier and I started with, was printed, I believe, as you will notice.

MR. BOWDEN:

They are in below that.

THE WITNESS

In below here: (Turns pages) This is the ones; this is the ones right here is our original that we started with.

TRIAL EXAMINER:
What page of the exhibit is that, can you tell?

[865] MR. BOWDEN:
Page 8, yes.
Q Will you go on through, Mr. Sherrer, and see if you can — .
A Yes, sir, these are the ones that we prepared.

TRIAL EXAMINER:
Which ones now?

THE WITNESS:
Beginning on page —
Q Is this the page?
A Yes, sir, it is where it was printed.

TRIAL EXAMINER:
Beginning on page —

MR. BOWDEN:
He is referring to page 8.

TRIAL EXAMINER:
Through 18?

MR. BOWDEN:
I don't know.
Q Is t' 's part of it?
A Yes, sir, this is it.
Q All right. Pages 9, 10?
A Yes, sir, that's it.
Q Page 11?

A That's right.
Q 12?
A Yes, sir.
Q 13?
A Yes, sir.
Q 14?
A Yes, sir.
Q 15?
A That's right.
[866] Q 16?
A That's right.
Q 17?
A Yes, sir, that's correct.
Q And that is 18?
A Yes.
Q (By Trial Examiner) Some of those have fresh headings on them, don't they?
A On these part ones they don't. They have our headings all the way.
Q Well, I know, but it is a new heading. There is not a single heading at the beginning of page 8, is there?

MR. BOWDEN:

No, sir, there are other headings throughout there.
A There are other headings throughout there.
Q Also printed?
A Yes, sir, some is. The original that I started out with is printed.
Q And the others beyond page 8 through 18, where there is a heading, are printed, aren't they?
A Yes, sir.
Q (By Mr. Bowden) Did you circulate these petitions, Mr. Sherrer?

A Yes, sir, through the feed mill, the warehouse, and I carried them to the concentrate. I turned them over to a woman [867] who I had never seen before nor since, and they were — She, I guess, replaced them in my truck; there is where they were whenever I got them back.

Q Where did you keep the petitions during the time that they were being circulated?

A In the tool box back of my truck seat.

Q About when did you start with these petitions, Mr. Sherrer?

A It was on a Wednesday after the 17th, I don't remember the date.

Q Are you talking about of January?

A Yes, sir, it was January?

Q About how long did it take you to get the petitions circulated completely, all of them that are represented by General Counsel's Exhibit 2?

A I got them through with and turned in on the 7th of February, which was on Friday; I remember that date.

Q Now what did you do with them, after you got the petitions signed in that fashion?

A Well, I went down to turn them over to Mr. Stephenson, and he was out of the office, and I asked Mr. Cannon if he would turn them over to him when he came in.

Q Is that the last time you saw the petitions?

A Yes, sir, that was the last time I saw the petitions.

Q And was that on or about February 7th?

[868] A Yes, sir, on a Friday.

Q Did any official, supervisor or foreman of the company either suggest, sponsor, assist or help you with those petitions?

A No, sir.

Q Where did you get the idea for the petition?

A Well, I read in the papers that petitions had been circulated through other plants, and what gave me the most idea was that the union never posted anything on the board to let the plant-wide know what was going on, and I wanted to see how all of the employes that was still there felt, and that was why the petition was prepared and circulated.

Q Well, was it because of your dis-satisfaction with the way that the offer had been received and turned down by the union?

A Yes, sir, that was it.

* * * *

[869] Q Did you have any conversation with Mr. Stephenson here in regard to the petition?

A On the 16th of February — or January; on the 16th of January, after I read that the proposal had been turned down, on the bulletin board — and on this board it was posted that if there was any questions we might ask — so I approached Mr. Stephenson and —

Q Where was this?

A The sectionizing plant; and I asked him about the union, and he said he wasn't able to advise me, that I would have to see someone else if I got advice; what was on the board meant that it was concerning our work, and other opportunities, not with that; that I would have to get my information somewhere else. So I asked him in this meantime if there was anything against the company rules for such a petition to be circulated, and he said he didn't know as there was or there wasn't.

[870] Q Is that the extent of your conversation with Mr. Stephenson?

A Yes, sir.

Q Did you have any conversation with him from that time or after you got the petition signed, at any time during the period?

A No, sir, not until the last past week, this past week.

Q That was in connection with what?

A In connection with my meeting out here on the petition.

Q In other words, we called you to the office to discuss it with you, didn't we?

A Yes, sir, that is all; you all called me to the office.

Q When you were circulating this petition, Mr. Sherrer, were you on the clock during this time?

A No, sir, I wasn't.

Q This was on your own time?

A Yes, sir.

MR. BOWDEN:

You may examine.

TRIAL EXAMINER:

Mrs. Fassig?

CROSS EXAMINATION

Q (By Mrs. Fassig) Mr. Sherrer, you said that the heading on those particular pages was printed. Do you mean printed or merely typewritten?

A Well, it is not merely typewritten. It was printed before it was used, and toward the end wasn't; but it wasn't wrote [871] out, it was more or less I call print.

TRIAL EXAMINER:

It is printed.

Q Oh, hand printed?

A Hand printed.

TRIAL EXAMINER:

Hand printed.

MRS. FASSIG:

Oh, I see.

Q (By Trial Examiner) Who did the printing?

A Mr. Lanier.

Q And who drafted the statement that is printed there?

A We together did.

Q (By Mrs. Fassig) Mr. Sherrer, how many of the signatures to the petition do you estimate that you obtained personally?

A Well, I would say that there was 200.

Q And when did you obtain them?

A Well, I started on Wednesday after the 17th, in February, which I don't recall the date.

Q You mean the Wednesday following January 17th?

A Yes.

Q The following Wednesday. And what time of the day was it; when was it? Tell us the circumstances when you obtained the signatures?

A Well, we started that morning before we clocked in; I got the feed mill that morning before we clocked in; and then after I clocked off I caught the juice plant warehouse, the big warehouse over at Citrusville. And I went back the next day and [872] caught the others after 5:30 — well, after 5 o'clock, after they got off their work.

I was off the clock at all times that I circulated this petition.

Q Did you ever see the petition being circulated in the plant during working time?

A Yes, ma'am.

Q You did?

A Yes, ma'am.

Q Did you discuss with Mr. Stephenson the circulation of the petition during working time?

A No, ma'am; I was off of the clock.

Q You didn't ask him whether or not it would be all right to circulate during the working time of the employes?

A No, ma'am, I didn't ask him that. I presume it would be the same as any other petition.

Q What is the usual practice regarding the circulation of petitions during working time?

A Well, the average rule, we take up collections for people down there, they just go on; if they are on the clock they go ahead and take up their collections; they go to each employe, and just a minute they stop and get their donations and go on, and it was under the same principle we done this. I didn't ask no foreman or no boss could it be circulated; which was customary with all circulation petitions, just a routine of circulating petitions, taking up collections and [873] other things, that was done on the same principle.

Q I don't understand your answer, Mr. Sherrer. You said you didn't attempt to circulate it during working time, because you assumed —

A I mean myself.

Q — that this would be the same as other petitions.

A Well, at the time that I circulated it I was off the

clock, for on my job I couldn't go and circulate it throughout the plant and hold my job down, so I s y when I was on my job I didn't circulate the petition, and after hours, when I was off, I circulated the plant.

Q In other words, the usual rule would be that an employe would not be free to circulate the petition during his own working time?

A That is correct.

Q So you say you didn't even ask Mr. Stephenson whether it would be satisfactory or permissible for you to circulate this petition during working time?

A No, ma'am, I didn't ask him. The only thing I asked him the time I approached him — let's go along with this -- the time I approached him on the 16th day of February —

Q Of January.

A I mean of January, on the 16th day of January, when I approached him, I asked him if there was any rules and regulations in circulating a petition, and he said he didn't know [874] of or against one being circulated. That was the answer.

Q You didn't ask him if it would be all right if some of the other employes, then, could circulate it during working time?

A No, ma'am, I didn't ask him.

Q Or if the employes could be contacted for their signatures during working time?

A I didn't ask him that, either.

Q Do you know whether or not Mr. Lanier did?

A No, ma'am. After the strike we were separated.

* * * *

[888] H. W. KELLEY

a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q (By Mr. Bowden) Mr. Kelley, are you hard of hearing?

A Yes, sir.

MR. BOWDEN:

All right, sir; we will speak loud so that you can hear.

TRIAL EXAMINER:

And you do the same thing.

THE WITNESS:

Yes, sir. I will, I guess.

Q What is your name and address?

A 322 First Street.

Q Lake Wales?

A Lake Wales.

TRIAL EXAMINER:

Is it -y or -e-y?

MR. BOWDEN:

K-e-l-l-y.

THE WITNESS:

e-y.

Q e-y?

A e-y.

Q I am sorry. What is your job with the Florida Citrus Canners Co-op?

A Peel foreman.

Q Peel foreman?

A Peel foreman.

Q Do you know Irby Brumlow?

[889] A Yes, sir.

Q How long, sir?

A Well, approximately about 25 years.

Q Did you see him shortly after the strike began on January 17, 1958?

A Yes, sir.

Q Where was this?

A Right at the old canning plant there, just before the railroad crossing, just beside the old canning plant.

Q Were you riding or walking at the time?

A Riding.

Q Were you driving?

A Yes, sir.

Q What was Irby Brumlow doing?

A He was over there on the side of the road, on the picket line.

Q Did you stop there then?

A Yes, sir. The train was switched across the road there and had the traffic backed up, and when I drove up I had to stop right even with him on account of traffic.

Q Were you on the opposite side of the road from him?

A I was on the opposite side of the road. He was on the left and I was on the right.

Q Did he come out into the street or did he stay on the curb?

A No, sir, he just came up to the curb, on the other side of [890] the road. He never did come out on the

road, but to the curb on the opposite side of the road from where I was sitting.

Q There was a space for the opposite traffic to pass between?

A Yes, sir, half of the road.

Q Was the train moving at that time?

A No, sir, it was across the street.

Q I see. Had you cut off your motor?

A No, sir.

Q Your motor was running?

A My motor was running.

Q Do you know whether Irby Brumlow is hard of hearing or not?

A Well, I didn't never ask him. He always acted that way to me. I don't remember ever asking him.

Q What did you say to him that day, Mr. Kelley?

A Well, I just drove up there and was caught, stopped there, see. I looked over there and saw him, and I just said, "Hi, boy, what are you doing over there?" being I had known him a long time and I figured he was a good friend of mine. He walked up there and said, "I'm on the picket line."

Q Is this when he walked up to the curb?

A Yes, when he walked up to the curb. I said, "Well, I sort of hate to see you do that; you made a mistake, under the conditions of everything, the freeze and everything."

Q Did you say anything to him about coming back to work?

A I just said, "You ought to have come back to work."

[891] TRIAL EXAMINER:

Ought to have?

THE WITNESS:

Ought to have.

Q Did you ask Brumlow why the union was picking on this company?

A No, sir.

Q Were automatic peelers mentioned in that conversation?

A Not one word.

Q In fact, Mr. Kelley, did you need any peelers at that time?

A Not any peelers at that time.

MR. BOWDEN:

You may inquire.

TRIAL EXAMINER:

Mrs. Fassig?

CROSS EXAMINATION

Q (By Mrs. Fassig) How long had Mr. Brumlow worked for you, Mr. Kelley?

A 25 years; that is, since he had started. Of course during the war in that time, something like five or six years between, you know. In fact, that kind of work wasn't going on, and I suppose he was employed somewhere else.

Q Had he held various kinds of jobs under your supervision?

A The same job?

Q No, had he held various jobs?

A No, he just peeled fruit all the time; that is all he ever done for me.

Q All he ever did was as peeler?

A All he ever done during that period of time he worked for [892] me was peeling fruit.

Q Had the company started replacing hand peelers with some kind of an automatic peeler?

TRIAL EXAMINER:

Machines?

THE WITNESS:

What is that.

TRIAL EXAMINER:

Try again.

Q Had the company started replacing hand peelers with automatic peeling machines?

A Had they started? Yes. Well, you see, I only had about 35 peelers this year. I mean this past season, wherein we have been carrying about 60, 65.

Q Had they been putting in automatic peeling machines then?

A Yes, ma'am.

Q As fast as they can do so?

A No, they don't seem to be in no hurry about just putting in machines. There have been machines there two years, you know.

Q Have they been putting in automatic peelers within the past year?

A The past year, the past two years.

Q Any within the last year?

A This last year?

Q Yes.

A Sure they have

Q Are they putting in more now?

[893] A Not any more now.

Q Do you know if they intend to put any more in?

A I don't know about that. I am not on the business end of that, I am just the peel boss.

Q You haven't been advised whether or not they are going to put in any more?

A I haven't been advised of anything.

Q How long would you say Mr. Brumlow and you were engaged in conversation?

A Well, I would say approximately maybe two minutes or three, actually in conversation.

TRIAL EXAMINER:

Did you have any trouble hearing him?

THE WITNESS:

Well, yes, I didn't hear nothing, half of what he said, you know, more than just talking, just part of it, and then the train, you know, switching, and then started off, and when the traffic moved I had to move because there was traffic behind me and in front of me, so I just moved off.

Q Who started the conversation?

A Ma'am?

Q Who started the conversation?

A Well, I don't know. Like I said, I drove up and said, "Hi, boy, what are you doing over there?" like always, you know, in all the years past. I was cut off and stopped there, you see, by the train, just opposite to where he was at.

[894] Q (By Trial Examiner) Did he ever come over to the truck?

A What?

Q Did he come to the truck?

A No, sir, he just came to the curb of the road. In other words, there was half of the road between me and him.

Q You could hear him from half way across the street?

A Partly.

Q (By Mrs. Fassig) When you drove up and stopped, and you said you called to him, did you mean for him to come over, you wanted to talk to him?

A I didn't mean; I just hollered to him, "Hi, boy, what are you doing?" just like this.

Q Did you say anything else?

A No more than just I told him I had been a good friend of him a long time, but I told him I was afraid he had done a mistake, on account of the freeze and everything, and the condition of the fruit.

Q What all did you tell him?

A That is what I told him.

TRIAL EXAMINER:

Did you tell him you thought he had done the wrong thing?

THE WITNESS:

I just told him I was afraid he had done the wrong thing, on account of the fruit freeze and everything, you know; just talking, conversation.

Q What would the fruit freeze have to do with his doing the [895] wrong thing? What is the connection?

A Well, it's a bad day, it looked like we might shut down at any time.

Q Did you tell him that?

A No, ma'am.

Q (By Trial Examiner) Did you tell him if the union

won it wouldn't amount to anything, the plant would just shut down earlier?

A No, sir, I never said anything about that.

Q Did you tell him if the union won the company would just put in machines altogether?

A I never even mentioned machines there.

Q Did you tell him that if he would come back in you could still give him a job?

A No, sir, I never said that.

Q (By Mrs. Fassig) What was the purpose of your stopping, calling to him?

A The train was switching, they had me cut off; the traffic was backed up all the way, you know, down, and I just happened — it fell on me to park right there across from where he was standing, that is the reason. I never cut off my motor, I was just waiting. The train here in two or three minutes began to move on, and the traffic began to move on, and I moved.

Q Why did you tell him that you thought he had made a mistake?

A Well, ma'am, just routine, you know, just being a freeze [896] and everything looked so bad at that time, I just said, "You ought to come back to work." In other words, I meant, "You ought to be making the time, you know, just like always;" just a friend, like I told you.

• • • •

VICTOR BACKUS

a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q (By Mr. Bowden) Will you give and spell your name for the Reporter, please.

A Victor Backus, B-a-c-k-u-s.

Q What is your address, Mr. Backus?

A Lake Wales, 222 East North Avenue.

Q What position do you hold with Florida Citrus Canners Co-operative?

A Night foreman.

Q Do you know Charlie Widner?

A Yes, sir, I do.

Q Did you have a conversation with him around January 10th, in the rest room of the concentrate plant?

A I don't thnk so.

[897] Q Do you recall making a statement at that time or at any other time to Charlie Widner, that if the employes would do the same thing as at Stokely-Bordo they would get a raise?

A I don't think I did.

Q Well, did you or didn't you?

A I didn't.

Q You what?

A I did not.

Q You did not?

A I did not.

Q Are you positive of that, Mr. Backus?

A Yes, sir, I am.

Q Do you recall any conversation of that type with Widner?

A I don't recall it.

MR. BOWDEN:
You may inquire.

• • • •

[899] JACK MILNER
a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q (By Mr. Bowden) Mr. Milner, will you speak loud, so they can all hear you. Do you spell your name M-i-l-n-e-r?

A Yes, sir.

Q What is your first name?

A Jack.

Q What is your address?

A 140 West Orange Avenue, Lake Wales.

Q What is your position with the Florida Citrus Canners Co-op?

A I am night shift foreman.

Q Will you speak loud enough so that we can all hear you. Night shift —

A Night shift foreman.

Q Was that your position at the time of the strike?

A Yes, sir.

Q Do you know J. B. Batson?

A Yes, sir.

Q Do you recall having a conversation with him, Leonard Gray, Dick — a fellow by the name of Dick, and Leo

Brown shortly before the strike, outside the capping room department?

A No, sir.

[900] Q You don't recall any such conversation?

A I don't recall it.

Q Did you ask J. B. Batson what he would do in the event of a strike?

A No, sir.

Q Did J. B. Batson tell you words to the effect that he would go out if God gave him strength?

A Never.

Q Did you mention anything to him about being hard-timed if he returned?

A No.

Q Do you know Leonard Gray?

A Yes, sir.

Q At the same time and place mentioned before did you ask Leonard Gray what he would do in the event of a strike?

A No.

Q Did he tell you at that time or at any time that he would walk out if God gave him strength?

A No.

Q Did you say anything to Leonard Gray about being hard-timed if he went out and came back after a strike?

A No.

Q Does either of these two men work for you, sir?

A No, sir.

MR. BOWDEN:

You may inquire.

[901] TRIAL EXAMINER:
Mrs. Fassig?

CROSS EXAMINATION

Q (By Mrs. Fassig) Mr. Milner, you are on the night shift. In what department do you work?

A Juice department.

Q And do you sometimes come down to the plant ahead of your regular time to go to work?

A Sometimes, yes, ma'am.

Q I think you testified on your direct examination that you know both Leonard Gray and J. B. Batson.

A Yes.

Q You know both of those boys. Do you know the boys who work in the same department with them?

A Yes, I know some fellows who work with them.

Q A day or two before the strike actually started at the company's plant, was there considerable discussion among the employes regarding the possibility of a strike?

A I never had no discussion with none of them myself about that.

Q My question is not whether you had any discussion with them, but as to whether you know if there was considerable discussion among the employes regarding the possibility of a strike?

A If they did they never mentioned it to me, never said anything to me about it.

[902] Q You never heard any conversation going on among any of the employes whatever before the strike actually started?

TRIAL EXAMINER:

Answer; don't shake your head.

A No, none of them mentioned anything to me about it, and I didn't ask any of them about the strike.

Q In other words, you didn't know there was any possibility of a strike at all?

A No more than what I just heard before I went to work, outside the plant.

Q You never heard the employes, or overheard them, talking among themselves about the strike or the possibility of a strike, before it actually started?

A No.

MRS. FASSIG:

That is all.

Q (By Trial Examiner) Did you say anything to Gray about the fact that he might be hard-timed if he went out on strike and then came back in?

A I did not.

Q Did you tell him that he might be probably fired?

A No.

Q Did you tell Batson that —

A No.

Q — if he went out and came back in he might could get fired?

A No.

* * * *

[903] THOMAS LEO BROWN

a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q (By Mr. Bowden) Will you speak loud now, Mr. Brown, and tell me what your name and address is?

A Thomas L. Brown, 132-1/2 West Third Avenue.

Q Do they call you Leo Brown?

A That's right.

Q Are you employed by the Florida Citrus Canners Co-op?

A Yes, sir.

Q Do you know Leonard Gray?

A Yes, sir.

Q Do you know J. B. Batson?

A Yes, sir.

Q Do you know Jack Milner?

A Yes, sir.

Q Do you recall a conversation between Gray, Batson and Milner outside the capping machine department shortly before the strike?

A No, sir.

Q You don't recall any conversation between that group of [904] which you were a member?

A No, sir.

Q Did you ever hear Jack Milner ask Leonard Gray what he would do in the event of a strike?

A No, sir.

Q Did you hear Leonard Gray say that in the event of a strike he would go out if God gave him the strength?

A No, sir.

Q Did you hear any remark by Milner that Gray would be hard-timed if he returned?

A No, sir.

Q Did you hear Milner ask Batson if he would go out on strike if one was called?

A No, sir.

Q Did you hear J. B. Batson remark that he would go out if God gave him the strength?

A No, sir.

Q Did you hear Milner tell Batson that he would be hard-timed when he returned?

A No, sir.

Q Were you present at any time when any remarks like these were made by Milner to Batson or to Leonard Gray?

A No, sir.

MR. BOWDEN:

You may inquire.

MRS. FASSIG:

No questions.

* * * *

[931] R. D. CHELETTE

a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q (By Mr. Bowden) Mr. Chelette, have a seat right there, please, sir, and speak loud so that we can all hear you. What is your name and address?

A R. D. Chelette.

Q Do you work with Florida Citrus Canners Cooperative?

A Yes.

Q What is your job, sir?

A Department superintendent, concentrate.

Q Of the concentrate?

A Yes.

Q What is your address?

A 237 East Polk Avenue, Lake Wales.

Q Mr. Chelette, what is the rule in the concentrate plant in reference to the passing of petitions and other matter around among the employes?

A It has always been the rule for them to approach me and ask permission and get it O.K'd, and start around at whatever convenient time it would be best to do that. That has been my policy.

Q Was that frequently done?

A Quite often, yes.

[932] Q Do you know what the nature of the things were that were passed around in your department, sir?

A Well, I would say mostly due to sickness or flowers, still due to sickness.

Q I will ask you if you had ever given the union permission to canvass your employes there in reference to questions involving their working conditions?

A They have had permission.

Q Who did that, and what were the circumstances?

A Well, Mrs. Godwin was the one, she and Theodore Hall, and that was in regard to their thinking that they were not, their time was not equalized on the shifts that they were working, changing once a month; one shift seemed to gain a little time over the other, and some of them were not satisfied, and they were trying to come to some

way of trying to even it up, and that was the time, one of the reasons that they were allowed to petition their people in regards to that, their preference.

Q Were they on the clock at the time they made that survey or passed that petition?

A They were on the clock.

TRIAL EXAMINER:

When was that?

THE WITNESS:

That was in the latter part of last season, somewhere along the first of June, somewhere about a month prior to the end of the season.

TRIAL EXAMINER:

1957?

[93] THE WITNESS:

Yes, sir.

Q Don't they also take orders for church dinners that are served out there from time to time?

A They do some, yes.

Q Did you object to that type of activity, Mr. Chelette, if it didn't interfere with their duties?

A No, sir.

Q Do you know Mrs. Myra Connelly?

A Yes, I do.

Q Did she ask you for permission to pass a petition?

A Yes, sir.

Q Did you give her that permission?

A Yes, I did.

Q Did you authorize her, or give her permission, to stay after her shift to continue to pass the petition?

A Yes. She asked permission to catch the night shift as they came on.

Q Did you authorize her to stay on the clock while she did that?

A No, I didn't on that.

Q Was it your understanding that she would be on the clock?

A No, sir.

Q (By Trial Examiner) Was she on the clock while she was on the day shift?

A Yes, sir.

[934] Q While she was passing the petition?

A Yes, sir.

Q (By Mr. Bowden) Was it also the policy of your department, Mr. Chelette, to allow employes to stay on the clock while they were making blood transfusions and things of that type?

A Yes, sir.

Q Do you recall a conversation that you had with Durrance along about that time?

A The only conversation I had with Mr. Durrance during that time was that he seemed to be concerned about the petition, or whatever it was, going around, and he was making some — Well, in other words, he was getting upset about it, and I hadn't mentioned anything to him in regards to that until that time, and then when I got aware of that I went to him and told him that they had permission, that I had given permission, and as long as they didn't abuse their time it was O.K.; and that was the conversation that I had with Mr. Durrance about it.

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[935] CROSS EXAMINATION

Q (By Mrs. Fassig) Mr. Chelette, as I understood your testimony you said that you had given permission to somebody, that they had your permission to pass this petition, as long as — something. If you will repeat that, I didn't quite get that.

A I don't quite get that question.

Q You said that they had your permission to pass this petition as long as it didn't interfere with work, or what was that?

[936] A That was always the policy, as long as it didn't interfere with the work, stop any groups or slow down, slow an operation down to any extent. It was satisfactory, when they asked permission on these things, as long as it didn't interfere with our operation of the plant.

Q To whom all did you give permission to pass this petition around there, then, in January or the first of February this year?

A Whatever date it was, Mrs. Connelly was the only one that I gave permission, or who asked permission to take it around.

Q How did the conversation between you and Mr. Durrance come about?

A Well, in regards to this, the conversation was that, for what reason — As I say, our policy was they came to me and asked permission, and they were granted permission in almost every case for whatever reason, but in this particular instance they had asked my permission, so I gave them permission. So as I was going around the plant there, someone mentioned to me that Mr. Durrance was unhappy about the petition. Well, I hadn't mentioned anything to him about the girl, Mrs. Connelly, asking for permission

and getting permission up to that time, so as I understood he was getting upset about it for some reason I went up and told him that they had asked permission and had been granted permission, and it was all right as long as they didn't interfere with the operation. And that was the [937] reason that I went to him and told him, where there wouldn't be a misunderstanding.

TRIAL EXAMINER:

Are you Durrance's boss?

THE WITNESS:

That is right.

Q Who told you Mr. Durrance was upset?

A One of our men working in the juice room had come down, and said a gentleman up there in charge was getting upset about it. I said, "Well, what about?" and he said, "Evidently the petition." I said, "Well, I will see about that;" so I went up to talk to Mr. Durrance on that, where I would maybe satisfy his mind that they had been granted permission.

Q Is it your testimony, then, that you initiated the conversation with Mr. Durrance?

A No, no, he approached me as I came into the juice room about it, and said that the girl was away from her job, and I said, "Well, she has asked permission to do this and I have granted it, so long as it doesn't interfere." That was the extent of the conversation.

Q In other words, he was complaining that it was interfering with the performance of her regular duties?

A Well, it wasn't as far as interfering it wasn't. We didn't stop the plant, any more than we had in any case of that nature.

Q In other words, the plant was going on in operation?

A Yes.

[938] Q It just simply stopped her performing her duties while she was running around and taking the petition around?

A That is right.

Q And you gave Mr. Durrance to understand that Myra Connelly had permission to circulate this petition and he wasn't to interfere with her, isn't that right?

A No, not to that extent.

Q To what extent did you say?

A I just told him that she had permission, so long as it didn't — ; but so far as any further conversation, there wasn't any other of that nature.

MRS. FASSIG:

That is all.

MR. BOWDEN:

No further questions.

Q (By Trial Examiner) One question. Did Connelly tell you what the petition was for that she wanted to circulate?

A Well, no. I mean, she didn't elaborate, no.

Q What did she say it was?

A She said it was just a petition that they would like to take around amongst the members.

Q A petition to do what?

A Well, that was for the decertification.

Q She told you that it was for the decertification?

A Yes.

Q Did you look at the heading on the petition?

A No, I did not.

[939] Q Did she show it to you?

A No, sir.

TRIAL EXAMINER:

Anything further?

Q (By Mrs. Fassig) Did you ever see the petition after that, Mr. Chelette?

A I didn't pay any attention to it, I mean as a petition or material or what. I was in my work, busy.

Q (By Trial Examiner) Did you ever see it? That was the question.

A No, not as a petition, no.

Q How did you see it?

A Well, just as a yellow pad, or whatever it was, that she had in her hand at the time that she asked me.

Q After she got through circulating it did you ever see it again?

A No, sir.

Q (By Mrs. Fassig) Mr. Chelette, you referred to it as a decertification petition. Do you know whether or not the petitions were ever filed with the National Labor Relations Board to actually get the Teamsters Union decertified?

A I don't know.

Q You don't know whatever became of the petition after that?

A I sure don't.

Q Did you ever discuss it with Mr. Stephenson after that?

A Well, it is possible that it was discussed after that. as [940] time went on.

TRIAL EXAMINER:

What do you mean, it is possible? Don't you know?

THE WITNESS:

Well, I mean we have discussed, the same as any other thing that we might discuss at any time.

Q Do you know how many employes in your department —

A I sure don't.

Q — signed the petitions?

A I sure don't.

Q You never had any discussion with Mr. Stephenson as to how many employes —

A No.

Q — in your particular concentrate plant —

A No, ma'am.

Q — signed such petitions?

A No, ma'am.

Q (By Trial Examiner) What was the discussion?

A Well, just that they had passed a petition around, and I just told him that they had; so that is usual in every case, almost every case that we have had, that he was usually informed of our operation and the nature of things that went on.

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[947] MARVIN H. WALKER

a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q (By Mr. Bowden) What is your name and address, sir?

A Marvin H. Walker, 1310 17th Street Northwest, Winter Haven, Florida.

Q And what is your position with the Florida Citrus Canners Cooperative?

A General Manager.

Q Have you held an official position with the Florida Citrus Commission?

A Yes, I was a member of the Citrus Commission for the three years ending last June 30th.

Q Will you describe briefly what the Commission does?

THE WITNESS:

I beg your pardon; last June 1st, 1958.

TRIAL EXAMINER:

You mean this month?

THE WITNESS:

Yes.

TRIAL EXAMINER:

The present month.

THE WITNESS:

Yes, sir.

A The Florida Citrus Commission is a State government agency administering all of the State laws pertaining to the citrus [948] fruit industry, which include the advertising and promotion of citrus fruits and the regulation

of the processing and packing of citrus fruits, licensing and bonding of shippers and canners, the establishment of grade standards, and things like that.

Q What is the Florida Citrus Canners Cooperative?

A It is a federated cooperative marketing association, engaged in the processing of oranges, grapefruit and tangerines for its members, and the marketing of the processed products.

Q Is it a non-profit organization?

A It is organized under the Florida Cooperative Marketing Act, but in 1951 it voluntarily gave up its tax exemption.

TRIAL EXAMINER:

Is it a corporation?

THE WITNESS:

It is a corporation.

Q During the period of time covered by these negotiations did the Cooperative fix any policy in regard to not signing a contract with the Teamsters union?

A It did not.

Q What was the policy of the Florida Citrus Canners Cooperative in reference to the negotiations?

A The policy was to endeavor to negotiate and conclude an agreement on contract provisions and wages as soon as possible.

Q Did that policy ever change?

A It did not.

Q Do you know of any contract or wage proposal that was [949] withdrawn by the company? Meaning the Cooperative, when I say the company.

A No.

Q Did you attend any of the bargaining sessions?

A Yes.

Q And did you attend the session of August 27th?

A Yes.

Q Why was this? Why did you attend this session, Mr. Walker?

A At that time there had been held about six meetings with the union, at which we were represented by Mr. Stephenson and Mr. Bowden, and they had been reporting to me on the progress of the negotiations. I was concerned by the fact that comparatively little progress had been made on many important contract provisions by the latter part of August, because we expected to start processing fruit in another five or six weeks, and we were anxious to have these questions settled and a contract signed, with a No-strike clause in such a contract, before we got into the fruit harvesting season. We are engaged in handling a perishable farm crop, and any disruption in our operations during the harvesting season could be very costly to us and to the growers who depend upon our facilities.

Q When was the next bargaining session that you attended, Mr. Walker?

A December 18, 1957.

Q Did you hear Mr. Teague testify that he had not at that [950] time publicized a strike threat in the newspapers in reference to your company?

A Yes.

Q Had you read such an article in the paper?

A I read an article in the Tampa Tribune about December 12th which threatened a strike.

TRIAL EXAMINER:

Did it purport to quote Mr. Teague?

THE WITNESS:

It quoted Mr. Teague as stating that the company — that the union had submitted to us its last and final offer, and as I recall the article he was asked if that meant that the union would strike if the company did not accept such last and final offer, and he is quoted in that paper as saying, "It certainly does," or words to that effect.

MR. BOWDEN:

I would like to introduce now, I think this will be Respondent's Exhibit 4, the article referred to by the witness.

(Thereupon the document above referred to was marked Respondent's Exhibit No. 4 for identification.)

TRIAL EXAMINER:

It is a clipping dated —

MR. BOWDEN:

The clipping is dated Tampa Tribune, December 12, 1957. It is dated December 11th in the body of it. I would like to offer this in evidence at this time.

TRIAL EXAMINER:

Is there any objection?

MRS. FASSIG:

Do you have any copies of it?

MR. BOWDEN:

I would like to withdraw the original and [951] substitute two copies for it.

TRIAL EXAMINER:

Is there any objection?

MRS. FASSIG:

No objection.

TRIAL EXAMINER:

I call your attention to the fact that the date of the newspaper, the original, is at the top in green ink. Are you going to make that notation on the copies?

MR. BOWDEN:

There is a notation on the copies.

TRIAL EXAMINER:

I see. All right, sir, the exhibit is received.

(Copy of document heretofore marked Respondent's Exhibit No. 4 for identification was received in evidence.)

Q Did that newspaper article that is now referred to as Respondent's Exhibit 4 influence your decision to attend the December 18th meeting?

A It was certainly one of the factors in that decision, yes.

Q Did you hear Mr. Wingate and Mr. Teague testify

that that meeting on December 18th began at 10 o'clock in the morning?

A Yes.

Q Will you state when the meeting was actually held?

A The meeting started at 2 o'clock in the afternoon of December 18, 1957. The meeting had been originally scheduled for. 10 o'clock in the morning, but because of weather conditions Mr. Bowden was delayed on his trip from Jacksonville to Lake Wales, and Mr. Stephenson phoned a union representative and agreement was reached that the hour of the meeting would [952] be changed to 1:30 p.m., at the Walesbilt Hotel in Lake Wales.

MR. BOWDEN:

I believe it would be better if we ask questions and answers, so it will shorten it.

THE WITNESS:

Surely.

Q Did the company representatives go to the Walesbilt Hotel at 1:30?

A Yes.

Q Did we begin negotiating at that time?

A When we arrived at the meeting room the union representatives said they would like to have some time for a conference, which we granted, and the meeting started at about two o'clock.

Q When you say a conference, was that a conference among themselves?

A A conference among themselves.

Q Now will you tell us, Mr. Walker, what transpired at that meeting on December 18, 1957.

A The company was represented by Mr. Stephenson, Mr. Bowden and myself; the union was represented by Mr. Teague, Mr. Wingate and the members of the union's Local negotiating committee.

Mr. Bowden spoke first, mentioning that I was present, and stating that before they started negotiations at this meeting I wanted to make a statement. Mr. Wingate spoke up and said that before I said anything he had something he wanted to say, and Mr. Bowden told him to go ahead.

Mr. Wingate said the union knew that there had been a [953] freeze. I might say that this meeting was held five days following the December 13th freeze.

TRIAL EXAMINER:

Was the freeze on the 12th or the 13th?

THE WITNESS:

On both nights. The worst temperatures were the nights of December 12th and 13th, Mr. Wingate stated the union had heard about the freeze from other packers. He stated that the union had made its own investigation and study of the freeze and had its own opinion as to the effect of the freeze on citrus operations for the balance of the season. He said the union knew there would be less fruit to process during the remainder of the season, but that the union also knew that prices of canned and frozen citrus products would be higher, and the union felt that the working people in our plant were entitled to their fair share of these higher prices.

He then said that the union had been trying to negotiate a contract with us for six months, and that there had been one delay after another in these negotiations. He attributed these delays entirely to the company. He stated that the people he represented were sick and tired of these alleged delays.

He then stated that — or rather he asked Mr. Bowden if the company had anything new to offer, and Mr. Bowden merely replied that we had no new proposals at this meeting. Mr. Wingate then stated that the members of the Teamsters union em- [954] ployed by us had met several weeks earlier, and by unanimous vote had authorized a strike if a contract could not be negotiated. He concluded by saying that if we, meaning the union and the company, are unable to reach an agreement by four o'clock this afternoon, he would have no alternative but to advise our employes to that effect. That was all he said at that time.

Mr. Bowden was the first to speak after Mr. Wingate. Mr. Bowden denied the charge that the company had been responsible for all of the delays in the negotiating meetings. He took some reports and notes from his brief case, and referring to them reviewed the meetings which had been held, or reviewed the meetings which had been agreed upon and called, and then not held, and he pointed out that some of these meetings were not held because the union had canceled them after the company had agreed to them, or that the union had failed to show up for the meeting, and he gave specific dates in his rebuttal to Mr. Wingate's statement. He said that the company had sincerely endeavored to reach an agreement with the union on contract provisions, and he pointed out that we had

reached an agreement with the union on a number of contract provisions.

Then he stated that the contract proposal submitted by the union to the company late in October contained articles which were different from articles on which the company and the union had agreed.

[955] TRIAL EXAMINER:

Did he refer to the October proposal or the November proposal?

THE WITNESS:

He was referring to the November proposal, dated November 23rd, and this was the first meeting that we were having since the receipt of that proposal. And Mr. Wingate asked him what those changes were, and he went through some of the articles and read the articles appearing in the latest contract proposal, and also read the articles that we had previously — the same articles that we had previously agreed upon with the union, to show the differences that the union had made in articles in this latest proposal compared with articles on which we had previously agreed.

About that time he asked me to go ahead with my statement, and I said that after listening to what Mr. Wingate had had to say I didn't know if I had anything to say. I said that Mr. Wingate said that our employes had met several weeks earlier and had voted to strike if a contract could not be negotiated. I said Mr. Wingate further said that if an agreement could not be reached by four o'clock this afternoon he would have no alternative but to advise

our employes to that effect. I said, "The clear, unmistakable implication of your remarks, Mr. Wingate, is that if we don't sign a contract with you by tonight you will strike." I said, "That is a threat. I don't like threats, I don't respond under the pressure of threats, and I have nothing more to say;" that is all [956] I said.

Mr. Bowden, after a moment, said, "Well, you heard what Mr. Walker said." Mr. Wingate said, "Well, we might as well adjourn the meeting;" and some of the people started leaving the room. I recall that Mr. Teague returned almost immediately to where I was still sitting, to shake my hand and say that he was glad that he had met me, and Mr. Bowden finished gathering his papers and we left.

Q (By Mr. Bowden) Had the union representatives already left at that time?

A We were the last of the group to leave.

Q Were any proposals of the company withdrawn at that meeting by the company?

A No.

Q Did the union attempt to set up another meeting before they left?

A No.

Q At this time, Mr. Walker, I will ask you, what was your reaction to that meeting?

A I was shocked.

Q Did you then prepare a letter to the employes of the company outlining your feelings about it?

A I did.

Q Is that General Counsel's Exhibit 22 (indicating)?

A Yes.

[957] Q That is the letter that you furnished?

A Yes.

Q Mr. Walker, as an individual and also as an official of the Florida Citrus Commission, were you at that time deeply concerned about the effects of the freeze?

A Very much so.

Q I am not sure that the record is clear, but did you testify that that first freeze was on December 12th and 13th?

A The most damaging temperatures were on the nights of December 12th and 13th.

Q (By Trial Examiner) Unofficially, how low did the temperatures get? I won't ask for an official reading.

A This is off the record. In Lake Wales it got down to — The nearest point we have to Lake Wales the recording the thermometer was 24 degrees.

Q Is that official or unofficial?

A That is the official Weather Bureau report.

Q What is the unofficial?

A Well, we heard of temperatures in the low, cold pockets, where they normally do not take regular readings, as low as 18.

Q Do you recall the freeze of December 1934?

A Very, very well. I fired groves in that freeze.

Q Do you recall how that freeze compared in severity with that of December 12th and 13th of 1957?

A It is difficult to make a comparison there, because the [958] industry has changed greatly since 1934. The areas in which groves are planted are larger now than they were in 1934, and our cultural practices have changed, too. This freeze, from the point of the number of boxes of fruit destroyed and the number of trees killed and the number of trees seriously damaged, was certainly far more serious than the 1934 freeze.

MR. BOWDEN:

I would like at this time to introduce as Respondent's Exhibit 5 an article from the Tampa Morning Tribune dated December 14, 1957, dealing with the first freeze.

(Thereupon the document above referred to was marked Respondent's Exhibit No. 5 for identification.)

MR. BOWDEN:

I would like to withdraw the original and substitute copies if I may.

TRIAL EXAMINER:

Any objection?

MRS. FASSIG:

No objection.

TRIAL EXAMINER:

The exhibit is received.

(The document heretofore marked Respondent's Exhibit No. 5 for identification was received in evidence.)

Q (By Trial Examiner) Mr. Walker, after a freeze of the type of December 12th and 13th, how long does it take before the effects can be appraised with any degree of certainty?

A That varies greatly. Immediately following the December 12-13 freeze we were concerned about the fermentation in the fruit juice. This freeze, or all of the freezes we had in this 1957-58 season, were different from freezes we had had [959] in other years, in that it remained cold between the nights of most damaging temperatures. When an orange freezes the juice cells are broken, and when the temperature gets up to 82, 85 degrees the juice in that fruit will begin to ferment, and during the period of fermentation, why, it is not suitable for processing purposes. There were only three days between the December 1957 and January 1958 freezes when I believe the records show that the temperature got up to 80 degrees. I and most of the other people engaged in handling fruit, were deeply concerned that all this damaged fruit was going to ferment. We estimated that at least 75 per cent. of the oranges on the trees in the state of Florida had been damaged to some extent. Well, we could of course bring some of them in before they could begin to ferment, but if the weather got warm and they began to ferment we would be stopped cold.

Q Does fermentation ruin the orange juice?

A Yes, and it is disastrous to use a fermented orange in a frozen orange concentrate, which is not pasteurized. They can be used a little more safely in canned orange juice. Well, in 1934, when you referred to the freeze in that year, we were not packing frozen orange concentrate. This is the first major freeze that has occurred in Florida since the start of the frozen orange concentrate industry in 1946.

Before the December freeze the Florida Citrus Commission, and a Concentrators Advisory Committee established

under State [960] law, had agreed that no frost damaged oranges should be used in frozen orange concentrate, and when the freeze occurred on December 12th and 13th the use of any oranges damaged by freezing temperatures in the production of frozen orange concentrate was prohibited. We had that regulation, and here we have been using about 55 to 60 per cent. of the entire Florida orange crop for frozen orange concentrate, so we just didn't know what was going to happen. A few days after the December freeze we realized that nobody could do anything under this regulation, and we were going to have to begin to gamble a little bit on the quality of our packs.

Q (By Mr. Bowden) Mr. Walker, had any accurate official estimate of that damage been made on December 18, 1957?

A Estimates had been made. I made estimates of the situation for our customers in northern markets. The Florida Citrus Commission, of which I was then a member, on December 14th, the day after the freeze, reduced its budgets 30 per cent. The revenues of the Commission are entirely dependent upon the number of boxes of fruit that are utilized.

Q Did you prepare a notice, after the December 12-13 freeze, that you circulated among your customers to advise them as to what the prospects were for the season?

A I did.

MR. BOWDEN:

Mr. Walker, if you will excuse me a minute, I would like to introduce as Respondent's Exhibit 6 a newspaper [961] article which appeared in the Tampa Tribune on December 15, 1957, in reference to an embargo that had

been imposed on citrus; and I would like to withdraw, if I may, the original and substitute two copies for the record.

MRS. FASSIG:
No objection.

MR. BOWDEN:
Thank you.

(Thereupon the document above referred to was marked Respondent's Exhibit No. 6 for identification.)

MR. BOWDEN:
I would also like to introduce at this time as Respondent's Exhibit 7 an article appearing in the Tampa Tribune dated December 18, 1957, in reference to the estimated loss, loss estimate at that time, which was then quoted as "May Top $50 Million."

(Thereupon the document above referred to was marked Respondent's Exhibit No. 7 for identification.)

MR. BOWDEN:
I would like to withdraw the original and substitute therefor two copies.

MRS. FASSIG:
No objection.

TRIAL EXAMINER:
Respondent's Exhibits 6 and 7 are received.

(The documents heretofore marked Respondent's Exhibits Nos. 6 and 7 for identification were received in evidence.)

MR. BOWDEN:
As Respondent's Exhibit 8 I would like to introduce copies of the letter which the Respondent company sent to its customers advising them of the citrus picture at [962] that time, which is dated December 16, 1957.

MRS. FASSIG:
No objection.

TRIAL EXAMINER:
It will be received.

(Thereupon the document above referred to was received in evidence and marked Respondent's Exhibit No. 8.)

Q (By Mr. Bowden) Mr. Walker, were there any other serious freezes during this season?

A The second serious freeze covering most of the citrus producing area was on the nights of January 9th and 10th, 1958. Then there was a third freeze the night of February 5th, when temperatures went to damaging levels.

Q I believe you testified that during this time there was an embargo that was placed on citrus?

A No, there was an embargo established on the shipment of fresh fruit, —

Q That is what I mean.

A — by the Florida Citrus Commission, which became effective, I believe, December 16th, for a period of seven days. That embargo was authorized and limited by State law to those seven days. Then a Federal Marketing Agreement Committee, with the approval of the United States Secretary of Agriculture, continued the embargo on all fresh fruit shipments for another seven or ten days following the State embargo.

TRIAL EXAMINER:

Were the embargoes renewed after the January and February freezes?

[963] THE WITNESS:

They were not.

Q Do you recall a wage proposal that the Company made to the union, Mr. Walker?

A I do.

Q Do you recall about when that was?

A January 4, 1958.

Q (By Trial Examiner) Before we get into that I would like to ask Mr. Walker a question about how long it takes, after a severe freeze, to determine what injury or damage has been done to the trees, rather than just to the fruit on the trees?

A Trees severely or seriously damaged by low temperatures, as they had been this season, do not start to put out their growth until the weather gets warm enough to induce them to do so, and citrus people judge by looking at the ground condition of the freeze, to some extent about

how bad the damage was, but they could not determine accurately whether the trees were lost or whether they could be brought back until the warmer period had arrived and the trees started to put out some growth.

Q And normally how long does that take?

A Well, it was, I think, late March or April before we were getting much good new growth on these badly damaged trees.

Q When is the blooming season in citrus?

A It varies, starting at the earliest in late January if it is warm at that time, and then we can have spotted blooms all [964] the way into June and July, but the heaviest blooming period is usually the last half of February and the early part of March.

Q How did these three freezes affect the blooming period this year?

A The trees that were not — Most of the trees that did not suffer defoliation — and by that I mean the loss of leaves — put out what is called a bouquet bloom, a very large, heavy bloom. Trees defoliated, or trees frozen to the extent that branches were destroyed, of course put out no bloom at all in many cases. But our trees may even bloom later this summer — some of these badly damaged trees are putting out new growth now. If we should have dry weather, say for four weeks, and then get a sudden hard rain, which is highly possible, they will put out more bloom at that time.

Q (By Mr. Bowden) Mr. Walker, to get back to my questioning in regard to the wage proposal which you made to the union on January 4, 1958, when was that wage offer determined by you to be made? I mean, when was it agreed upon to be made?

A The decision was made the morning of January 4th.

Q And it was forwarded over there the same date?

A It was mailed that day.

Q By this wage proposal did you withdraw any contract provision?

A We did not.

Q Was this the first wage offer that has been made by the [965] company?

A Yes.

Q Did this offer receive any newspaper publicity?

A There were newspaper reports of our wage offer after it had been rejected by the union, and those reports were not issued by us.

MR. BOWDEN:

I would like to offer, your Honor, as Respondent's Exhibit 9, a newspaper article from the Tampa Tribune in reference to interviews given by Mr. Teague in which he mentions that the Respondent is the only company that has a wage proposal before them, and again mentioning the strike possibility.

TRIAL EXAMINER:

What is the date?

MR. BOWDEN:

The date is January 7, 1958, from the Tampa Tribune.

TRIAL EXAMINER:

Is there any objection?

MRS. FASSIG:

No objection.

TRIAL EXAMINER:
It will be received.

(Thereupon the document above referred to was received in evidence and marked Respondent's Exhibit No. 9.)

MR. BOWDEN:
I would like to withdraw the original and substitute copies for it.

TRIAL EXAMINER:
Permission granted.

MR. BOWDEN:
As Respondent's Exhibit 10 I would like to offer a newspaper clipping from the Tampa Morning Tribune [966] dated January 8, 1958, and a report given by Mr. Teague in which he again mentions the Respondent and the possibility of a strike at this plant. I offer in evidence two copies, which I will substitute for the original.

TRIAL EXAMINER:
Is there any objection?

MRS. FASSIG:
No objection.

TRIAL EXAMINER:
The exhibit is received.

(Thereupon the document above referred to was received in evidence and marked Respondent's Exhibit No. 10.)

Q (By Mr. Bowden) Mr. Walker, at the time of the company's wage offer, and also at the time of the receipt of the union's reply to that, were you still agreeable to meetings to discuss, negotiate on those items?

A We were.

MR. BOWDEN:

I would like at this time to introduce a news article appearing in the Lake Wales News, dated January 16, 1958, as Respondent's Exhibit 11.

TRIAL EXAMINER:

What date?

MR. BOWDEN:

January 16th, which is the day before the strike.

(Thereupon the document above referred to was marked Respondent's Exhibit No. 11 for identification.)

MRS. FASSIG:

I would like to ask Mr. Walker a question or two concerning this item.

MR. BOWDEN:

Yes.

[967] Q (By Mrs. Fassig) Mr. Walker, did you give the News, make the statement to the newspaper concerning this item of January 16th?

MR. BOWDEN:

It is not in evidence. Is it all right for him to see it?

MRS. FASSIG:

It is a *voir dire* question.

Q Did you make a news release to some correspondent or reporter?

A It was not a news release. Mr. Jerry Bowers, managing editor of the Lake Wales News, phoned me, I believe it was the morning of January 15th. He had read in other newspapers about the union's rejection of our wage offer, and he asked me in effect, "Well, what is the status of negotiations now? What is going to happen next?" and I told Mr. Bowers that nothing had happened since the union had rejected the wage offer, and he said, "Well, do you expect to meet with them again?" and I said, "Yes, we expect to meet with them soon."

MRS. FASSIG:

I have no objection to the offer.

TRIAL EXAMINER:

It will be received.

(The document heretofore marked Respondent's Exhibit No. 11 for identification was received in evidence.)

MR. BOWDEN:

I would like to withdraw the original and substitute copies for it.

TRIAL EXAMINER:

All right, sir.

Q (By Mr. Bowden) Mr. Walker, do you recall the strike, [968] when it occurred at the plant of the Respondent on January 17th?

A I do.

Q Will you briefly describe the conditions at the plant immediately after the strike began?

A The picket lines were established, as I recall, about five or five-thirty in the morning, and I was notified by phone —

Q I was thinking more of the conditions at the plant itself. What problems, I will say, did you have confronting you at that time?

A We were handling a large quantity of frost-damaged fruit, which had to be handled rapidly to avoid losses in this fruit, and our member associations were picking all the fruit they could just as fast as they could, and delivering it to us. I recall that on the morning of the strike we had about 25,000 boxes of fruit in our fruit bins, and estimated that fruit deliveries that day would run from 45,000 to 50,000 boxes of fruit. The day before the strike we had received about 46,000 boxes of fruit.

Q All right, sir. Did you attend the bargaining session of January 28, 1958?

A I did.

Q Would you briefly recall for us what occurred at that meeting?

A We were represented by Mr. Bowden, Mr. Stephenson and my- [969] self. The union was represented by a Mr. Morgan, and I believe Mr. Wingate and the Local committee. The meeting was held in the Walesbilt Hotel. The thing I remember most clearly about the meeting is that there wasn't one word said at the meeting about the strike, which surprised me. The meeting was devoted entirely to a review of contract provisions. There was no discussion of wages.

Mr. Morgan had not participated in any earlier bargaining conferences, and Mr. Bowden spent some time in reiterating the company's position on certain contract provisions, and Mr. Bowden and Mr. Morgan discussed in some detail possibly four or five of the articles of the proposed contract under consideration.

TRIAL EXAMINER:

Which particular proposal were they discussing, do you remember?

THE WITNESS:

I could not, sir.

Q At the time that meeting broke up do you know what arrangements were made for any future meetings?

A There were no arrangements made at that time for another meeting.

Q Mr. Walker, do you know anything about the petitions that were circulated in the plant?

A I know they were received, and I have seen them.

Q I mean, you know nothing about the circulation or the origination of those?

[970] A The first I heard about the petitions is when Mr.

Stephenson phoned me at my office early one morning, this must have been late in February —

TRIAL EXAMINER:
Late in February?

THE WITNESS:
As I recall it, yes; and said that he had received some petitions from our employes.

Q That was your first knowledge of it?

A That was my first knowledge of it.

* * * *

[978] Q Can you give us any estimate, Mr. Walker, of how much more per box you were able to return this year?

A I have made no such estimate, and in our operations our fiscal year ends on August 31st, and at that time we normally have four and five million dollars worth of processed products unsold which we have to value for fiscal purposes, and it is as of August 31st that we compute what our members are going to get for the fruit they have delivered this season. It usually takes thirty days after August 31st to figure that all out.

Q Yes, for any final figures, but would you be in position at this time, Mr. Walker, to let us know whether your company's operations through the first eight months of this year have been as profitable as your operations through the first eight months of the previous season?

A The question is difficult to answer, because we don't operate as most corporations in this country operate.

Q (By Trial Examiner) I think what Mrs. Fassig is

getting at is this: Didn't the higher prices make up the loss in the production of fruit?

A The higher prices did make up for the loss in the volume of fruit, yes, and the total sales were higher, and I am sure that other processors in the industry, operating on a corporate basis, had a much more satisfactory or profitable experience this season than they had in the preceding season.

* * * *

[988] A There was discussion at the December 18th meeting about the last contract that had been submitted by the union prior to that meeting.

Q 15th of November.

A I had understood it was November 23rd or 25th that it was received, not on November 15th.

Q Accepting your statement that it was submitted to you November 23rd, can you recall for us what subjects or provisions of that contract were discussed during that December 18th meeting?

[989] A No, I can't. While Mr. Bowden was going through several of these articles, discussing the changes, I was quite preoccupied with what Mr. Wingate had said, and I was occupied with what I was going to say to him, and I was paying very little attention to the details of these changes.

Q Can you recall anything at all that Mr. Bowden discussed or said regarding that contract proposal during that meeting?

A I can recall statements by Mr. Bowden that this last proposal from the union contained articles which were dif-

ferent than some of the articles on which the union and the company had previously agreed, but I am unable to state to which articles he was referring.

* * * *

[992] Q Well, did Mr. Bowden make any offer that he would draft a contract which would incorporate his and Mr. Stephenson's understanding of the agreements that had been reached up to that time between the parties?

A He did not.

Q Did he suggest a willingness, or did he indicate in any way a willingness to go down and thoroughly examine the contract, or to see to exactly what extent you were in agreement on the various provisions of that contract?

A He did not.

[993] Q As I understood it, you said you were interested in attending this meeting because you were desirous of reaching a contract with the union, because you were going to be going into your production season, and that you came to this meeting because you were concerned that the parties had not yet arrived at a contract. Did I understand you correctly?

A I testified that I went to the August 27th meeting for those reasons.

Q Yes. Weren't you still concerned by the December 18th meeting?

A I was concerned for other reasons on December 18th. I was concerned by the published report quoting Mr. Teague as saying that the contract they had submitted to us about November 23rd was the last and the final proposal of the union, and by the quotation of his remarks in that article it implied, or stated very emphatically, that

if we didn't accept this last and final proposal there would be a strike. I was concerned that we were in a crisis with this freeze. I thought that the union, under the circumstances, should consider the unusual features of the situation, and the great difficulty that we would have in concluding negotiations on that day in the remaining intricate articles of this contract, and further reaching an agreement on wages, which had not even been discussed up to that time, and I felt that we were entitled to the same consideration from the Teamsters union that it had given [994] two other plants operating in competition with us.

Q Mr. Walker, then you were concerned with trying to determine the extent to which the parties were either in agreement or in disagreement with reference to a contract, were you not? You would want to know how far apart the union and the company are or how close together they may be able to get with reference to a contract, weren't you?

A I knew, generally speaking, the status of negotiations when we entered the meeting on December 18th. I was not familiar with all the details, but I believed that it was utterly impossible for the union and ourselves to sit down that day and reach a full and complete agreement, and my purpose in going there was to discuss our problems with the union and to ask for the same consideration which this same union, the day before and that very morning, had given to two other competing plants.

TRIAL EXAMINER:

What was that consideration?

THE WITNESS:

The Teamsters union representatives met with the Adams Packing Association on December 16th, and Mr. Harrison

Searles, who is a member of the Florida Citrus Commission, a man I talk to quite frequently — he was general manager of that plant — told me, following the union meeting, when I asked him what happened, that the union had agreed to — well, suspend, delay negotiations for two weeks because of the freeze, and then they would get together and negotiate further. And [995] by the way, at that plant negotiations had progressed further than they had at our plant.

Q That is what I was going to ask. Do you know to what extent that company and the union had come to an agreement on the non-monetary items?

A I was told that there was pretty good agreement on all of the —

Q Non-monetary items?

A — non-monetary items.

Q That leads to my next question, as to why the company could not attempt to negotiate with respect to the non-monetary items, and try to reach an agreement on those, and merely defer, continue to defer, the monetary items, the same as you had been ever since contract negotiations had opened? You had been deferring the monetary items.

A Well, I mentioned two plants. On the morning of December 18th the Teamsters union met with representatives of the Bordo Products Company at Winter Haven, and those negotiations, from what I had heard about them, had notprogressed as far as our negotiations had progressed, but the union, at that meeting on the morning of December 18th with Bordo Products Company, agreed to suspend negotiations thirty days. Then a few hours later they come to Lake Wales and they tell me, "You sign a contract by four o'clock this afternoon, or else."

Q (By Trial Examiner) Well, did the happening of the freeze [996] have any effect, or as of December 18th would it have any effect on other conditions than wage rates, probably? Did it affect opportunities for employment during that current season?

A The number of man hours, of course, would be reduced in fair proportion to the reduction in the number of boxes of fruit that could be harvested, yes.

Q Were there any other working conditions that might be affected at that time by the happening of the freeze, which you were then currently unable to appraise?

A Well, we were running into higher overtime costs, running longer hours, especially in the juice plant and the fruit yards.

Q As I understand it, then, there was more involved at the time than wage rates, which the company felt it was unable properly to appraise?

A That is right.

Q (By Mrs. Fassig) Could you elucidate that for me, Mr. Walker? How would the freeze have any effect upon the grievance procedure? Would it have any effect upon that?

A Grievance?

Q Yes, the grievance procedure in a union contract. Would the citrus freeze have any effect regarding grievance procedure?

A Very definitely so.

Q Why?

A In our negotiations, because we were so very heavily occupied with more pressing, urgent, critical problems. Here [997] we have all this fruit coming in, badly damaged fruit, taking tremendous gambles with hundreds of thousands of dollars in what we are putting into cans, and

the frozen concentrate plant not knowing how they are going to come out, not knowing what the regulations are going to be the next week, or even the next day at times, and with our customers clamoring for products, the problem of trying to re-evaluate citrus product values, adjusting prices — all those problems which were urgent and had to be settled right then, you say why didn't I spend that day talking about grievance procedure?

Q No, I didn't say why didn't you spend that day talking about grievance procedure, I think that was one of the things that had been previously agreed to, but I say how would the freeze prevent you from being willing to put it into a contract with the union?

A I don't follow your question at all, Mrs. Fassig. I am sorry.

Q Well, I can see how a freeze might conceivably have some relation to the amount in wages you would be willing to offer the employes, and the monetary expenses, but I don't understand your reason why the company would not be willing to agree with the union or incorporate in an agreement with the union those things which had already been agreed to with the union, and merely continue to defer until some later date the incorporation of the monetary items.

[998] A Frankly, I haven't — We were handed an ultimatum, a package, a last and final offer, complete — contract provisions, wages and everything. "Sign this by tonight." They don't say they are going to change it. "Sign this by tonight, or else." Why sit down and talk to them about a grievance procedure?

Q Mr. Walker, did you ask the union whether they would be willing to enter into any interim agreement until such time as you could determine the extent of the freeze?

A No, no, we didn't.

Q Will you explain why the company didn't make any response to the union following receipt of this union third proposal, which you refer to as the November 23rd proposal; why no meeting had been scheduled before December 18th?

A As I remember, the meeting on December 18th was scheduled at about the time we received the last and final contract proposal from the union.

Q (By Trial Examiner) Going back to the suggestion about an iterim agreement, in the meeting of December 18th did the union make any suggestion that you and they enter into an interim agreement perding the clearing up of the emergency conditions?

A No.

Q Well, did the existence of those conditions in any manner affect the amount of time which the company had available to engage in further negotiations?

[999] MRS. FASSIG:

I am sorry, I didn't understand. Could I have that read back?

(Last question and answer and pending question read.)

A Yes, it did. If I may qualify a previous answer about the December 18th meeting, that date was established before the December 12-13 freeze. Whether it was actually established before the receipt of the union's last proposal on November 23rd I can't say.

Q (By Mrs. Fassig) Am I correct, Mr. Walker, in understanding that the meeting of December 18th did not actually involve any real negotiations between the company

and the union in an attempt to arrive at an agreement on any of the particular provisions of a contract?

A It did not involve negotiations, as I understand negotiations.

Q Yes. In other words, Mr. Bowden, as I understand your testimony, merely pointed out some respects in which he thought this third contract proposal from the union differed from what had previously been agreed to between the parties?

A Yes.

Q And aside from pointing out those differences there was no effort made to go down article by article of the contract and to see to what extent they were in agreement, or to what extent the union would recede from its request or to what extent maybe the company might be willing to give a little bit. In other words, there was no real negotiation at that meeting?

[1000] A That is right.

Q And the reason there was no real negotiation, I understand, is because of the freeze, is that right, that you were not in position to do that because of the freeze, to take time to negotiate on those provisions?

A Well, there could have been some negotiations, but after Mr. Wingate made his statement the trend of the meeting changed rapidly.

Q And when did he make that statement?

A At the opening of the meeting, at the start of the meeting, his opening statement.

Q (By Trial Examiner) Was any reference made in that meeting to the fact that the union had granted a moratorium on negotiations at other plants?

A No, sir.

Q Did the company request or suggest a moratorium on negotiations at that meeting?

A It did not. I had planned to make such a request, and that was the reason I had gone to the meeting, and Mr. Bowden had asked me to say something at the opening of the meeting, which I had fully intended to do, about the effects of the freeze and our problems, and to ask for time.

Q In other words, Mr. Wingate got to say his piece but you didn't.

A That is right.

[1001] Q (By Mrs. Fassig) You didn't get to say your piece, or you declined to say your piece?

A After he said what he did, I told him I had nothing further to say to him.

Q And you made that statement immediately following his statement that —

A Well, Mr. Bowden talked first, and then I finally talked.

Q Mr. Bowden talked. You say that he reviewed the —

A That is right.

Q — the extent to which he thought this contract differed from prior agreements?

A That is right. Well, also some dates on which meetings had been arranged and not held for various reasons.

Q And did Mr. Bowden then, after pointing out these differences, state then that the company would have to let the union know when they would have time to really negotiate with the union?

A I don't recall any such remark.

Q I will ask, Mr. Walker, did you believe that Mr. Wingate's statement that the employes were concerned about wanting a contract, and that the committee would have to report back to the employes that afternoon the

statement of the company — did you believe that that statement by Mr. Wingate relieved the company of any responsibility to try to negotiate with the union?

[1002] A No, but I believed that the union was delivering an ultimatum to us, and we couldn't bow to them or accept it under those conditions. I described his statement as a threat. I thought it was totally unreasonable, unjustified, and I was highly indignant about it.

TRIAL EXAMINER:

Did Mr. Wingate deny that it was a threat?

THE WITNESS:

No.

Q Mr. Walker, I would like to ask one more question. Did the company refuse or decline or fail to negotiate on December 18th because of the statement made by Mr. Wingate or because of the freeze?

A The meeting was brought to an abrupt end after about forty minutes, when Mr. Wingate said that a strike had been authorized; if we didn't reach an agreement that afternoon there would be no alternative but to advise our employes to that effect, and we would — We hadn't even had before us at any one of these negotiating meetings a wage proposal. None of the money items of the contract had even — well, excepting for, I think, the article on vacations, and possibly reporting time, other money items hadn't been discussed or considered, and the mere idea that we would have sufficient time to sit down with the union that day and go through all of the provisions of what it said was its last and final contract, when it was quite unsatisfactory to us —

[1003] Q Mr. Walker, you had had that contract from the union for at least several weeks, had you not?

A We had received it about November 23rd.

Q 23rd?

A Or 25th.

Q All right, from about November 23rd or 25th to December 18th.

A That is right.

Q So you had had their proposal. Did you come to the meeting with the expectation and intention to negotiate with the union concerning their proposal?

A We hoped that the union would recognize our problems, and agree to a suspension or an adjournment or a recess of the meetings for several weeks, so we could recover somewhat and have the time to sit down with the union and take all the time that was necessary to really negotiate and consider the document in its entirety.

Q (By Trial Examiner) Had you considered what position the company was going to take in the event the requested suspension was not agreed to by the union?

A It never occurred to me, no. It never occurred to me that the union would take the attitude it took that afternoon, especially after I had the information that they had agreed to delay their negotiations at Adams and Bordo.

Q Do you know who the negotiators for the union were at [1004] Adams and Bordo?

A I have no first hand knowledge of that. I am not sure. I think Mr. Teague negotiated at Bordo, but who negotiated at Adams I just don't know.

Q (By Mrs. Fassig) Just to summarize, it was basically because of the freeze, then, that you came to that meeting with the intention of asking the union to defer negotiations?

A Basically and entirely.

Q All right. Then the answer to that question I asked some time ago is that the reason negotiations were not held on this day was because of the freeze?

A Yes.

Q That you felt you were not in position, due to the freeze, to negotiate at that time?

A That is right.

Q Then after December 18th did you make any effort to notify the union when you were in position to negotiate with them?

A No.

Q In response to their third contract proposal, or in any effort to arrive at any contract with the union?

A The arrangement, dates and hours for meetings with the union, was handled by Mr. Stephenson, because he and Mr. Bowden were attending all those meetings. I attended a total of only three of all the meetings, and I have no recollection of what, if anything, Mr. Stephenson might have done, say the latter [1005] part of December, about another meeting with the union.

Q Well, did Mr. Stephenson confer with you as to whether he should submit any counter proposal to the union at all, to accompany the wage offer?

A No, we didn't; he didn't.

Q Did he report to you the union's inquiry, Mr. Wingate's inquiry which he made to Mr. Stephenson upon receipt of the wage offer, as to whether or not any kind of a contract went with it?

A He did.

Q He reported that to you?

A Yes, and he further told me that he told Mr. Wingate that the union already had our contract proposals, they fully understood our position on contract proposals, they

knew what we were willing to accept in the way of a contract.

Q In other words, do I understand, then, that you would expect the union to have to try to draw up another proposal, to try to incorporate what it thought the company would be willing to agree to in a contract to go with the wage offer?

A Well, someone would have to finally develop it. We didn't develop it at the time. It takes some time to do those things.

Q Yes.

A And Mr. Bowden resides in Jacksonville when he is there, and he usually actually writes those things. He wasn't immediately available when I decided to make that wage offer to the union.

[1006] Q When you say that Mr. Stephenson told Mr. Wingate the union knew or had the company's contract proposal, do you refer to the one and only written contract proposal which had been submitted by the company last May a year ago, May 1957?

A The union had two proposals from us, one in May —

Q And the A. F. of L. contract?

A And the A. F. of L. contract, and the company would have accepted either one of them.

Q Had the company ever made any effort to draw up and incorporate the amendments to such contract proposals which had been agreed to with the union?

A Not to my knowledge, no.

Q You do know that it had agreed to some amendments to those two proposals?

A Yes. I didn't attend most of the meetings at which those agreements were reached.

Q But Mr. Stephenson had reported them to you, had he not?

A Yes.

Q Kept you advised?

A I was kept reasonably well advised by him.

Q Regarding this meeting in January, January 28th, wasn't Mr. R. D. Chelette present at that meeting, Mr. Walker?

A I think he — I can't say for sure, but at at least two of the meetings I attended Mr. Chelette was present, and he could have been present at that — What date?

[1007] Q January 28th.

A — January 28th meeting.

Q How about Mr. McVay?

A Mr. McVay attended some of the meetings, too.

Q Was he present at that January 28th meeting?

A I can't recall for sure that he was.

Q And how about Mr. O. H. Heath?

A Mr. Heath had been attending some of the meetings. I have seen him at some of the meetings. I am not sure if he was at the January 28th meeting.

Q Showing you Respondent's Exhibit No. 4, a newspaper item dated December 11th, if you will glance over that article, which quotes a statement released to the press by Mr. Teague in which he was asked, "Does that mean a strike if they don't accept?" referring to negotiations with your company, to which Mr. Teague replied, "It sure does," was that newspaper news item of December 11th the first news paper account that you read or heard of which purported to quote a statement by Mr. Teague relating to a strike or the possibility of a strike? Is that the first one?

A It was the first one about a strike at our plant?

Q Yes, that was my question.

A It was, as I recall, the first article about a strike at our plant.

Q Mr. Walker, you said that at this December 18th meeting [1008] Mr. Bowden reviewed the specific instances in which negotiating meetings had not been held. Can you at this time recall just what Mr. Bowden said in that connection?

A I can't recall any of the dates he mentioned.

TRIAL EXAMINER:

Did he make any reference to the fact that the union's negotiators attended a Teamsters convention?

THE WITNESS:

Yes, he mentioned that for a period of time no effort was made to have a meeting, or no meetings were held, because Mr. Wingate went to a convention at Miami Beach; and he also made some reference to Mr. Wingate saying at some meeting which I did not attend that they would not attempt to set a date for the next meeting unitl he had heard from the International about something which I knew nothing about.

Q At the time Mr. Wingate made his statement that you have related several times, in which you said he informed the company that he was going to have to report back to the membership by four o'clock of that day the company's position with respect to negotiating on a contract, what did you say in reply to Mr. Wingate's statement then?

A I said that the clear and unmistakable implication of his remarks was that if we didn't sign a contract by that night he was going to strike. I said, "That is a threat. I don't like threat, I don't respond to the pressure of threats, and I have nothing more to say."

Q That was your response to Mr. Wingate when he made that [1009] statement?

A Yes.

Q Mr. Walker, when did you first see the petitions which had been circulated among the employees?

A I saw them at Mr. Stephenson's office, but it was possibly four or five, maybe even seven days after he actually received them, because — well, I was out of town a good bit of the time, at other meetings.

Q I can't quite hear you.

A I was out of town, I was going to other parts of the state, and he had told me that he would check the names on the petition and compare them with our payroll records.

Q You say he already had when he showed them to you?

A No, he was still engaged in it when I talked to him. I think there were several names he couldn't decipher.

Q They were left with him or turned over to him on February 7th, and it was anywhere from the 11th to the 14th of February before you first saw them and learned of them?

A I think it was anywhere from four to seven days after he actually received them that I saw them, while I was talking to him in his office.

Q Did you before that know that petitions were being circulated among the employees?

A I did not. The first information I had was the information I had from Mr. Stephenson, when he phoned me at my office [1010] one morning and told me that we had received a petition from our employees.

Q He didn't advise you of any inquiry beforehand from employes as to whether they could circulate them and get signatures to them?

A None whatever. There was no discussion between Mr. Stephenson and myself on that point.

Q What did you and Mr. Stephenson decide to do about those petitions?

A I told Mr. Stephenson to talk to Mr. Bowden about it, and to find out just what they meant.

Q Did you understand them or consider them as petitions to get the Teamsters union decertified?

A No, I did not. I understood them just the way they read, and as I remember they said they didn't want to be represented by the Teamsters union and wanted to accept the wage offer, and while I am totally inexperienced in legal matters, it didn't read to me like a decertification petition, because I couldn't imagine the National Labor Relations Board ever considering a petition quite as short as that was. It seemed far different from the forms that you usually hear about and read.

Q And yet, on the basis of those petitions, you felt the Company should no longer continue to recognize the Teamsters as the legal representative of the employes of the company?

A After Mr. Stephenson had fully checked these petitions and [1011] it was determined that they were signed by a little more than 75 per cent. of our employes, we discussed those petitions with Mr. Stephenson — I beg your pardon, Mr. Stephenson discussed those petitions with Mr. Bowden, and there was no consideration or question of more meetings with the union, more negotiations, but here we had a petition signed by a majority of our employees saying they didn't want to be represented by the Teamsters union. More than a year had elapsed since the Teamsters union had been certified as the bargaining agent of our employes, and I gathered from Mr. Bowden that that had some significance

in the situation which I didn't fully comprehend, and after discussing the matter with Mr. Bowden the union was notified at some time, I don't recall the date, it may have been in response to some letter of inquiry from the union, but we did have such a petition from our employees, and that in view of this petition, in view of this strike, it would be illegal for us to conduct negotiations with them.

Q Mr. Walker, referring back again to your conversation with Mr. Stephenson after your January 4th wage offer had been submitted to the union, just what did Mr. Stephenson report to you concerning his conversation with Mr. Wingate?

A After we had submitted this wage offer to the union?

Q Yes.

A On January 4th?

[1012] Q Yes.

A He told me that Mr. Wingate had phoned him and had acknowledged the receipt of the offer, and had asked, "Where is the contract?" and he had replied, "Well, what do you mean?" He said, "Well, there is no contract provision with this wage offer," and he told Mr. Wingate that Mr. Wingate fully understood where we stood on contract provisions acceptable to us. That was about the extent of it. We had previously submitted a contract, the union knew what we were willing to accept in the way of a contract. We didn't say that those were the last and final contract offers, we never delivered that kind of an ultimatum to the union, but the union had had before it for a period of some months, of six months, a contract offer, and then a subsequent contract offer.

Q I asked the question, I want you to restrict your answer to just what Mr. Stephenson related to you had been the conversation between himself and Mr. Wingate?

A That was about the extent of it. Mr. Wingate had phoned and said, "Where is the contract that goes with this?" and Mr. Stephenson said, "Well, you know what our position is on the contract."

Q And that was all?

A As I remember it, that is all there was to it.

Q He didn't suggest that you get together and finish the negotiations for a contract, or suggest scheduling another [1013] meeting?

A No. I think that further, having remarked about the wage offer and some of the contract provisions, he kind of objected that the wage offer was not acceptable to the union.

TRIAL EXAMINER:

She is asking about whether Mr. Wingate had requested another meeting on that telephone call.

THE WITNESS:

No, he didn't report to me that Mr. Wingate had requested another meeting on that date.

Q Well, the union had sent you this November 23rd contract proposal, and was it the company's position at that time that the proposal was entirely unacceptable to the company?

A No, I wouldn't say so, and I am sure that there are, there must be some articles in there which are acceptable to the company. I wouldn't say that the last and final contract proposal of the union was entirely unacceptable, though I couldn't go through the contract and point out to you the ones that are acceptable.

Q Yes, I understand that, Mr. Walker. You say that the December 18th meeting was not a negotiating meeting because of the freeze, that you wanted to defer negotiations

until you could assess the extent of the damage due to the freeze, when you would have more time to sit down and complete negotiations for a contract, and that is why I wanted to make sure whether or not Mr. Stephenson in any way whatever suggested to Mr. Wingate as to when the company would be willing and would be [1014] able to sit down and complete the negotiations on a contract.

A He didn't report any such conversation to me. The December 18th meeting was scheduled before the December freeze.

Q Yes, I understand that.

A For the explicit purpose of negotiating on this contract.

Q At the time it was scheduled.

A Yes.

Q But you testified that the reason they didn't negotiate was because of the freeze.

A That is right.

Q So I am trying to find out whether at any time after that the company has endeavored to complete the negotiations with the union.

A It had another meeting on January 28th.

Q Yes, but Mr. Stephenson made no suggestion for any such meeting at the time Mr. Wingate called him regarding a contract proposal to go with the company's wage offer?

A He didn't report any such thing to me.

• • • •

[1019] M. A. STEPHENSON

a witness called by and on behalf of the Respondent being again duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q (By Mr. Bowden) ...

* * * *

[1039] Q Did you have a conference with Wingate between the meeting of October 31st and the next meeting held by the committees on December 18th?

A A short one, yes.

Q At whose request was that meeting set up?

A At Mr. Wingate's.

Q And will you explain to us how that was accomplished?

A Well, I would hardly call it a meeting.

Q I mean in setting up the —

A It was a rather casual discussion, as I recall.

[1040] TRIAL EXAMINER:

How was it brought about? That is what he is getting at.

THE WITNESS:

Yes, sir. Sometime after, two or theree days following the date of 11/23 when we had received the proposal, when Mr. Wingate called regarding it and wanted to know if we had received it, at that time he suggested that maybe we could get together, just he and I, and discuss the situation some; and I told him that I didn't see what that would accomplish particularly, we both had negotiating committees, and I wasn't very much in accord with discussing offhand the proposals. Well, he thought it might serve some purpose, we might be able to exchange ideas, get a little closer together and so on, and after some discussion along that line I believe I told him well, if he was over that way some time, why, stop in and we would see.

So in the following week there, as I remember it, I was out of the office quite a bit, and it seemed like three or four times when I came back in I had a notice that we got a call from Mr. Wingate, trying to get in touch with me. He had left no word to call back, evidently a local call. So about Wednesday, I believe it was, of that week —

Q When would that be in point of time, or in point of the calendar, Mr. Stephenson?

A Well, that gets us past this — over Thanksgiving, and that would be the first week in December, say about the 4th or 5th [1041] of December that would be.

Q (By Trial Examiner) Which is Wednesday?

A Wednesday is the 4th.

Q Is that your recollection, that it was held on a Wednesday?

A I would say either Wednesday or Thursday. It was around the middle of the week as I recall it. I don't know the exact date, I didn't make a note of the exact date.

Q Was anything said by either one of you about the meeting being off the record?

A That was Mr. Wingate's initial suggestion, that we just talk among ourselves.

Q You mean on the telephone the previous week?

A As I recall it, yes; just a personal conference.

Q (By Mr. Bowden) All right, sir.

A On this day, as I recall, it was just about noon time, I was in the office somewheres between 11:30 and 12 o'clock, and I got a call from Mr. Wingate and he wondered if he could see me. So I don't know where he was, I thought he was probably in Auburndale, and I said, "How long will it take you to get here?" "Oh," he said, "just a few minutes." "Oh, you are in town?" He said Yes. I said "All right, then, if you can get here in a little while I will see you." So he

did come on up, and we had a discussion which involved the contract — the general situation, the contract to some extent, and the wage; [1042] it covered wage information also.

Q Mr. Stephenson, had there been any discussions in the committee meetings in reference to the cost items up to that time?

A No detailed discussion at all. They had been passed by on consent at the meetings.

Q Did this conversation with Mr. Wingate concern itself predominantly with cost items that had not been discussed?

A Well, he sort of wanted to check over the contract a little bit, which I wasn't too much in accord with, and finally we kind of shuffled through it a little, and I got the impression that Mr. Wingate was trying to feel me out a little as to the eventual possibility so far as the cost items were concerned.

Q Did you get into any discussion with him in reference to the raise that had been given in the industry generally up to that time, or proposed?

A I don't know that we had any particular discussion concerning it. At that time the proposal that we did receive on the 23rd of November had a 25 cents per hour wage increase, and there were some 8 1/2 cent figures which we understood were around in the industry so far as offers were concerned. In discussion I questioned Mr. Wingate as to whether he thought that 25 cents was quite the thing, whether that was going to be their final offer or not. He indicated that they may [1043] finally revise that some, maybe possibly down to 15 cents.

Q Did you also discuss paid holidays, and qualifying for vacations?

A Not in any detail. In casual discussion of them he pointed out that in the contract they had submitted last here

that they had gotten down to a request for two paid holidays. I indicated that in some final conclusion of all the arrangements we may possibly be able to arrive at one paid holiday, which I believe had been offered, too, some place in the industry; and on vacations, about the same thing, that we may finally go along with a qualification of 1750 working hours for one week.

Q Did you go over the union's proposal of November 23rd in detail at that time?

A No.

Q Did you agree in that conference to any specific article as proposed or as changed by Mr. Wingate?

A I told Mr. Wingate, to begin with, that I hesitated to discuss the contract at all other than in a formal negotiating meeting; certainly I was not in position, and wouldn't anyhow, make any commitments myself in discussion with just he and I. He rather insisted that we did check over the contract a little, and finally I got it out, but with the clear understanding, definite understanding and his agreement that anything we said there or discussed there was not of a final or conclusive [1044] nature at all, recognizing that that should be handled in the proper manner with the bargaining committees.

So far as keeping the meeting secret was concerned, I said that I would say nothing about it if that was his desire. I assumed possibly that his request was because of maybe his relations with the committee, his committee, and certainly I had no reason for secrecy concerning the discussion at all. As a matter of fact I had mentioned the casual request of Mr. Wingate for a conference between he and I to both Mr. Walker and to Mr. Bowden, back several days before, when the first request was made.

Q All right, sir. Did you tell Wingate in that meeting that you didn't see much wrong with his proposal?

A No. I told Mr. Wingate, as we got around to the proposal, that I hadn't been through it entirely myself, I hadn't had an opportunity to discuss it with Mr. Bowden, so I would have no final conclusions concerning it. I did have some notes which I had made on my copy of the proposal, which were for — well, memorandum more or less, to discuss with Mr. Bowden and for my own thinking as I had gone over the contract, or at least some parts of it. Mr. Wingate said could he see those, and I said, "Well, I don't suppose that will do any harm, but understand that they are certainly nothing of any nature that I am proposing to you at this time, or with no thought that there would be any commitment for any later commitment concerning them, [1045] even in a formal meeting." And as I recall, Mr. Wingate said, "Well, I think I will make a few notes anyhow, if you don't mind." So he had his copy of the contract, and sitting across the desk — we were facing each other — he did make some notes during that time, but we leafed through the thing and skipped here and there; it was kind of a casual once-over on the contract.

Q (By Trial Examiner) How long did you spend doing that?

A It was about an hour, I would say, sir.

Q In the entire meeting?

A Yes, sir. As I recall, Mr. Wingate — It started before noon and lasted up into the noon hour, as I remember, and Mr. Wingate, I believe, had another conference, some meeting set up some place, and he was rather in a hurry and went on out hurriedly; so the meeting didn't drag out, it was only a quickie.

Q Did he make any request for a meeting of the committee, negotiating committee, when he left?

A As he left I believe there was some conversation there, that maybe we had better try to set up a negotiating meeting.

Q Did he suggest any date?

A No, sir, no specific date.

Q Did you suggest any?

A No, sir. I told him that I would — we had been thinking of setting one up there, but I still had to get in touch with [1046] Mr. Bowden and arrive at some date; I would get in touch with him if I could arrive at one, or he was going to get in touch with me, I am not sure which way we wound up.

Q Did you report that meeting to Mr. Bowden?

A Yes, sir, also to Mr. Walker. As a matter of fact, Mr. Walker came into the office, I believe it was — Well, I think actually he stopped in the office while Mr. Wingate and I were in conference, and was told by the girl outside that Mr. Wingate was in there, and he had gone on and had had lunch then, and after lunch he stopped by again at my office. That was after Mr. Wingate had gone.

Q (By Mr. Bowden) Has Mr. Wingate mentioned that conference to you, sir, since that time?

A No.

* * * *

[1047] Q When did you next receive a request for a meeting of the [1048] committee?

A Well, the next thing was, if my memory serves, a wire from Mr. Wingate. This was in the week following, on December 11th.

Q Would that be General Counsel's Exhibit 21-A?

A I don't know whether that is it or not. I will have to check that.

Q (Witness shown General Counsel's Exhibit No. 21-A.)

A It didn't start off the same way.

Q Is this (document produced by witness) a copy of the wire that you got? Is this the only telegram you got in this regard?

A Yes.

* * * *

[1051] Q Was that meeting then held on December 18th?

A Yes.

Q Do you recall what time that meeting started?

A Yes. It was scheduled for 10 a.m., as the exhibits indicate. On the 18th there was some bad weather, and Mr. Bowden was coming down to attend that meeting, and about 9 or 9:30 in the morning he called me from Daytona Beach. In coming down from Jacksonville he had run into a front he couldn't get through, and he had to turn and finally got down on a runway at Daytona; so as soon as he got in there he called me and told me then that the only chance he had of getting there [1052] would be to get a U-Drive-It car at Daytona and drive on down and finish the trip. Of course, that was going to take some time, and it would be right around noon-time then before he could get here. So I called Auburndale, tried to, the union office, as I remember, but it was a little too late, there was nobody there. So then I checked at the hotel, it was getting around about 10 o'clock then, and got hold of, I believe, David Wingate and told him the circumstances, and that the earliest then that we would be able to meet would be after lunch, and we set the meeting then for 1:30.

Q Do you recall who attended the meeting representing the union?

A Mr. Wingate, Mr. Teague and the negotiating committee.

Q Will you describe that meeting, then?

A As I recall, Mr. Walker went along with us that day, with Mr. Bowden and myself, and we went up to the hotel at 1:30, and as we got up to the room on the mezzanine floor where the meetings were held, the union committee was in the room already and engaged in a discussion. I remember Mr. Walker opened the door and started in, he was there alongside of me, and Mr. Teague, I believe, asked him then, told him that they were having a little private conference there and would we mind waiting just a little while while they finished. Of course we agreed, and waited outside there for about thirty minutes and went in then; they came to the door and [1053] told us, there about two o'clock, that they were ready to proceed. So we went in and sat down in the usual arrangement.

Mr. Bowden spoke first, I believe, and told Mr. Wingate that today we had Mr. Walker with us, and he wanted to make a statement. And Mr. Wingate immediately said that before anybody said anything, why, he had something he wanted to say. So Mr. Bowden told him, "Well, go ahead." so Mr. Wingate started out on a tirade —

MRS. FASSIG:

I object to the witness characterizing Mr. Wingate's remarks.

THE WITNESS:

I am sorry.

MRS. FASSIG:

Let him repeat just what he recalls Mr. Wingate said.

TRIAL EXAMINER:

Sustained. State what he said.

A (Continued) Mr. Wingate started making his remarks then, and as I recall he said that he supposed that we wanted to talk about the freeze. They had heard a lot about the freeze from all the other companies, and so on and so forth; they knew it was a serious matter; that work would probably be lessened considerably through the season because of the fruit damage, but they had their own ideas, that is the union, he, as to the seriousness of the thing and how it should affect the relationship between the union and the workers. The workers, the union, had their opinion, that they were not going to allow the freeze to be a means of any further stalling on [1054] negotiations; with this company they had been in negotiation some six months or more and no decisions had been arrived at; we had their last and final proposal in our hands, and that it was necessary, in their opinion, to reach a conclusion that day.

I remember Mr. Wingate slowed down two or three times and Mr. Bowden started to speak, but Mr. Wingate continued on, and probably went on in that vein for some fifteen or twenty minutes, mentioning, too, that the committee had been authorized by the International and by the Local membership to — had been authorized or given strike sanction some time earlier, and that it was necessary to reach a conclusion on the matters promptly; we should act on the final proposal of theirs which we had, and if conclusions on that were not reached by four o'clock that after-

noon he had no recourse but to report that fact to the membership, and he couldn't predict the following results.

That about wound up his remarks. So incorporated in those had been some charges of stalling on the part of the company in negotiations, and at the conclusion of that Mr. Bowden took some exception to that with Mr. Wingate, that he had been charging all the stalling tactics and delays to the company, pointing out that on several instances at least meetings had been set up which the union committee had not attended, also delays caused by union requests, like for the Miami [1055] convention, and following this October 31st meeting, when Mr. Wingate had said that he was waiting on some word from the International. So at that point Mr. Bowden said, well, Mr. Walker could then make his statement.

Mr. Walker at that time said that in view of what he had just heard he wondered whether he had anything to say or not. He had some things in mind that he had intended to discuss, but he considered this ultimatum that had been thrown at us a threat; he didn't react well to threats, he didn't like such pressure, and in view of the circumstances he had nothing more to say or do with that meeting.

Mr. Wingate then, I believe, mentioned to Mr. Bowden, "What about the proposal?" Mr. Bowden replied then that we had given it some consideration, looking it over; we hadn't finished yet with it in our review of it, but on the basis that it was quite changed from anything we had had before. It included some agreements that we had, but it also included agreements that we did not have, and the whole complexion or make-up of the contract proposal was quite

changed from what we had been working on before. Things were in different places, taken out of one article and put in another article, and that sort of stuff. Anyone who is familiar with contracts realizes it is rather confusing and very difficult to chase down, to get the net results. He pointed out to Mr. Wingate several of the things that had been changed from those that we [1056] had prior agreement on.

Mr. Wingate then said, "Well, you have nothing new to propose?" And Mr. Bowden replied, "Not today, not at this time." Wingate said, "Well, in view of that, there is no use meeting any further," and they got up, the union committee, and started filing out. We got our stuff together and followed them out of the room.

Q Did the company withdraw any proposals at this meeting, Mr. Stephenson?

A No.

Q Did we have any proposals from previous meetings that had been discussed on all the major items of a contract?

A Yes, we had proposals in, yes.

Q When was the next time that you received a request from the union for a meeting?

A Well, I don't believe that was until after several weeks later. (Examines documents) It appears to be on the 18th of January.

Q Was that after the strike?

A Yes. I have a wire.

Q Pursuant to that request was a meeting then set up?

A Yes.

Q For what date?

A It was set up for the 28th of January.

Q As a matter of fact, wasn't it set up for the 29th, and later moved to the 28th?

[1057] A Well, it was finally on the 28th, yes. There were several exchanges of wires.

TRIAL EXAMINER:

I believe those are all in evidence, aren't they?

MR. BOWDEN:

Yes, sir.

TRIAL EXAMINER:

General Counsel's series 26-A through J.

A (Continued) It was set first for the 29th, and then we wired again and set it back up one day to the 28th.

Q All right, sir. Did you attend that meeting of January 28th?

A Yes.

Q Who was the main union representative at that meeting?

A Mr. Morgan took over for the union at that meeting.

Q Do you recall what happened at that meeting?

A Yes. The meeting had been set for 11 o'clock in the morning. We were there at 11 o'clock; the union came a few minutes after, five or ten minutes after, and they all sat down and got arranged, and as I recall it everybody sat there for about thirty minutes before Mr. Morgan finally looked over and said, "Are you ready?" Mr. Bowden replied, "Yes, we have been ready since we came in." So Mr. Morgan, I believe, then inquired about the status of the contracts or proposals at that time, and Mr. Bowden attempted to bring him up to date; in other words, they engaged in a review at the time between Mr. Bowden and Mr. Morgan.

on the various contracts and various [1058] provisions of them.

Q (By Trial Examiner) Which one did he work from, which particular proposal, do you know?

A I believe they all three came in — all three or four came into the picture eventually.

Q The company's and the union's, both?

A Yes.

Q Including the union's final proposal of November 23rd?

A Well, it started out with that final proposal, and Mr. Bowden pointed out some of the differences in that as against the prior agreements that they had had, and he reviews back through the company's proposal and through the union's proposal of the 9th, that is October 9th, and — let's see. Most of the time was spent going through there and confirming or not confirming various proposals, and discussing some of the others where there had been no agreement, until about the middle of the afternoon, and Mr. Bowden and Mr. Morgan got into a disagreement about one of the provisions there. It was in connection with the General Provisions there, and the atmosphere finally got a little strained, and we said we had to leave a little early there because we were in a strain there with some operational problems, and the meeting broke up.

Q Well, what provision was it that led to that final flare-up, do you know?

A It appears to me that it was in connection with the — [1059] Q Speak louder, please, sir.

A Well, one of the problems there was arbitration. As I remember, Mr. Morgan insisted on some provision in there where we would arbitrate what is arbitrable. The last provision discussed escapes me.

Q Well, do you recall what the charges were that Mr. Morgan and Mr. Bowden bandied back and forth?

A Well, something to the effect that — it seems to me—

TRIAL EXAMINER:

You will have to speak up. The Reporter isn't getting it.

THE WITNESS:

May I see the contract, please? Oh, I have one.

Q I wasn't questioning about the provisions of the contract at the moment, but I was just asking if you recall what the exchanges were that took place between Mr. Morgan and Mr. Bowden just before the meeting broke up. Did they call each other any names, or not?

A Well, I don't believe they exactly called each other any names. It got down finally, though, to a reference to Mr. Morgan's taking the Fifth Amendment so many times in the McClellan hearing.

Q What did Mr. Morgan charge Mr. Bowden with, or the company with, that led to that, do you know?

A Apparently he had some thought that we were being somewhat displeased with some of the provisions here.

[1060] Q Did he specify how?

A Sir, at this moment I don't exactly recall.

MR. BOWDEN:

Are those all your questions?

TRIAL EXAMINER:

Yes.

Q (By Mr. Bowden) After the meeting of December 18, 1957, Mr. Stephenson, did the company make any proposal to the union on wages?

A Yes.

Q And when was this?

A On January 4th.

Q Did you receive a phone call from Wingate regarding this?

A Yes.

Q Do you recall what was said in this phone call?

A Well, Mr. Wingate had received the proposal which we had forwarded, and called and said that he had received this wage proposal and he was somewhat surprised. "Well, why surprised? We hadn't made one before, and we wanted to get a full picture in for consideration." He says, "Well, what about the contract? Isn't there supposed to be a contract in? Did you forget to send one?" I told him no, we hadn't forgotten to send one; the contract was another phase of it, and he was familiar with all of our proposals. We had full proposals, as far as the contract was concerned, with them at the time.

Q Is that all that was said between you and Wingate at that time with reference to the proposals; the wage proposal, I mean?

[1061] A I believe that is right, yes.

TRIAL EXAMINER:

Did he ask for a meeting to discuss it?

THE WITNESS:

No, sir.

Q Did he tell you at that time that he was going to present it to the membership?

A Yes.

Q Did you ever tell Mr. Wingate that that proposal on wages was made on the basis of No Contract?

A Oh, no.

* * * *

[1065] Q Did you receive the petitions which were signed by the employes, which have been received in evidence as General Counsel's Exhibit No. 2, pages 1 to 18?

A Yes.

Q Who gave you these petitions?

A They were delivered to my office. I don't recall that anybody handed any of them to me directly.

Q Who did you say you got them from?

A I say they were delivered to my office. I know a number of them were left with Mr. Cannon, the superintendent of our juice department, and with Mr. Sherrer — I mean by Mr. Sherrer, left with Mr. Cannon by Mr. Sherrer late one afternoon, when I was out of the office. Mr. Cannon told me about it when he saw me shortly after that, and I told him to put them on my desk, and in the next two or three days, why, there were one or two more that appeared on the desk. Nobody handed me any directly.

Q Do you recall having a conversation with R. E. Sherrer in the sectionizing department?

A Yes.

Q When was that?

A It was the 16th of January, in the middle or latter part of the afternoon.

[1066] Q Was that the day before the strike?

A Yes.

Q And under what circumstances did this conversation take place?

A Well, I was just in the plant on a visit there, and Mr.

Sherrer — I was talking to somebody there. Mr. Sherrer walked up and stepped back a few feet and said, "I would like to see you if I can." So I said, "Sure." So I walked over there to him, and he said, "We noticed that notice is put up on the board there that the union has turned down the wage offer." I said, "Yes, that is right." He said, "Well, a bunch of us are not satisfied with that. We don't like that, and are wondering what we can do." I said, "I don't know of anything you can do. He said, "Well, we want to do something." I said, "You will have to get advice from somebody else." I suggested the Labor Board in Tampa, or some other disinterested party. I said, "I just can't advise you people about that." He said, "Well, tell me this." About that time Mr. Lanier walked up also and joined the conversation, at least was listening, and Mr. Sherrer said, "Is there any company rule that would prohibit us from circulating any petitions?" and I replied that I didn't know of any company rule that would prohibit it, as long as it was handled in the normal way that such things are and have been handled, our regular practice is, as long as it didn't interfere with the plant opera- [1067] tion.

Q Is the company policy in this respect similar to the language in the old Citrus Workers contract identified as General Counsel's Exhibit 17, in Section (c), Article II, page 4?

A I am sure I know the language you refer to, and that is right. (Examines G. C. Ex. 17) This, of course, is in the union contract: "The union agrees that there will be no solicitation of membership or collection of dues from its members — "

Q You don't have to read it, sir. That is just for your own information.

A Well, that was the first part of it, yes; " — which will

in any manner interfere with the production or proper operation of the plant." If it refers to our company policy, that of course is the important part of it.

Q Is that the rule in effect in the plant in regard to the passing of petitions, collecting, or other personal activity on company time?

A That is a practice that we have operated under for a number of years; in fact, I think in all my experience.

Q Have you ever prohibited the solicitation of union dues or check-off authorizations, if it did not interfere with the operation of the plant?

A I know of no instance where we have prohibited them. I don't believe we have had any such prohibition in any contract. [1068] At one time, I believe, a contract prior to this one you refer to there in the booklet (G. C. Ex. 17), I believe it granted permission, at certain periods of time at least, for collection of dues, although I think as a matter of practice it was never followed, but permission, I am sure, was included in there.

Q After this original contact by Mr. Sherrer with you in the sectionizing plant, did he ever contact you again about the petition?

A No, he did not.

Q After you received the petitions did you reconcile the names on the petitions furnished you, and identified as General Counsel's Exhibit 2, pages 1 through 18, to ascertain if they contained the names of employes of the company?

A I did.

Q Will you tell us how many names were on the petitions in General Counsel's Exhibit 2, pages 1 through 18?

A I will refer to my figures again. I recapped those names, comparing them with a payroll listing as of and through February 7, 1958.

Q Is that the date you got the petitions?
A That is when the last one I had was received.

MR. BOWDEN:
I see.

THE WITNESS:
As we counted them, the total names on the petitions were 634.

TRIAL EXAMINER:
Did you find any duplications?

[1069] THE WITNESS:
Yes, sir.

MR. BOWDEN:
We will get to them next, your Honor.

TRIAL EXAMINER:
All right.
Q Were there any duplications or terminations on the petitions?
A Yes, sir, we found 25.
Q Duplications?
A Duplications, and 16 terminations.
Q How many net valid signatures remained?
A Reducing the 634 by the 16 and 25, left a net of 593.
Q What percentage of your employment total did this represent, then?
A The payroll, those in the bargaining unit, a listing of

those in the bargaining unit at that point was 778, and this 593 represented 76.2 per cent. of that total.

• • • •

[1071] Q Do you know J. E. Holly?

A Yes, sir.

Q How long?

A Oh, twelve, fourteen years, I guess.

Q Did you know Holly when he was chief steward for the [1072] Citrus Workers Union?

A Yes.

Q Have you sat on arbitration panels in which Holly sat as union arbitrator?

A I believe that is right.

Q Have you always known Holly as a strong union adherent?

A To the best of my knowledge, yes.

Q Do you have any social contact with Holly?

A No.

Q Is your acquaintance with him limited to an employer-employe relationship?

A Yes.

Q Is your acquaintance with Holly any different from the hundreds of other employes at your plant?

A No. Acquaintance?

Q Yes.

A Well, I —

Q Your contact with him.

A Well, contacts, no. I visit with hundreds of others we have in the plant; some of them I don't even know their names. I do, of course, know Mr. Holly, and a good portion of the other employes.

Q I mean, other than knowing his name do you have any more contact with him than you do with the others?

A Well, not normally, no. Because of being on arbitration [1073] panels and union committees and so on, I have known him better than some others.

Q Have you ever reposed any confidence in Holly that was not given to the other employes in general?

A No.

Q Do you recall seeing Holly at the plant on Christmas day, 1957?

A Yes.

Q Where was he located in reference to your office?

A He was in the plant, which is, oh, just a little ways from my office. He was watching that day, plant watchman.

Q Did you tell Holly that a strike would be foolish because of the freeze?

A No.

Q Well, did you tell him anything about a strike?

A Well, I mentioned that I hoped we would not have a strike, particularly because of the freeze; it would be rather an increased problem both for the employees and the company.

Q Well, did you tell Holly that a strike would be foolish because of the freeze?

A No.

Q Did you tell Holly for them to get together and kick the Teamsters out?

A No.

Q Did you call the Teamsters, to Holly, a bunch of gangsters [1074] and crooks?

A No, I don't use those terms; I don't ever.

Q Did you invite him to get a bunch of his friends and come to the office?

A No.

Q Did you tell him you would arrange for legal advice?

A No.

Q Was any mention made of a company union at that time?

A In the particular conversation we had, I think Mr. Holly indicated something of dis-satisfaction and wondering —

TRIAL EXAMINER:

Speak up.

MR. BOWDEN:

I can't understand you either.

A He indicated some dis-satisfaction and an ignorance more or less of what was going on with our negotiations and so on, and whether or not there were going to be any increases or any settlements and so on, and he expressed some dis-satisfaction with the union set-up as I remember. I think he mentioned Mr. Wingate and Mr. McLean, and questioned their ability to decide what might be best for him, and referred to some place he had worked some time prior, I don't know where; as I gathered, he had worked same place where there was some kind of employer-employe operating committee, or some kind of an arrangement of that nature, which he had found very agreeable, evidently.

Q Did I understand you to say that Holly asked you if you [1075] were going to make a wage proposal to the union?

A He was wondering if there were any conclusions of that kind being made.

TRIAL EXAMINER:
I wonder if I can go back and ask to have that question read. I haven't heard any answer to it.

THE WITNESS:
Surely.

MR. BOWDEN:
He answered it finally.

TRIAL EXAMINER:
Let's see if he did. I would like to hear that question.

(Record read, beginning "Q Was any mention made of a company union at that time?" and ending, "A He was wondering if there were any conclusions of that kind being made.")

Q What did you tell him?
A I told him that we had been considering for several weeks a wage proposal. We hadn't arrived at any figure, the freeze had come along and sort of disrupted our thinking on that, too, but we were getting around to thinking of it again, and expected to get something shaped up there and make a proposal on wages to the union in the very near future.
Q (By Trial Examiner) Did you say mid-January?
A I didn't mention any time.
Q Did you say anything about it being retroactive to mid-December?
A We hadn't made any decisions on it at that time.
Q Well, did you say to him that?
[1076] A No, sir; I would say not, no, sir, because we

hadn't decided on a wage rate at that time, or the features of it.

Q (By Mr. Bowden) Did you say anything to Holly about a Blue Cross plan increase?

A No.

Q Did you tell Mr. Holly that you wouldn't sign a contract with the Teamsters?

A I did not.

Q Did that conclude the conversation with him so far as you can recall?

A That is about it. We talked about the freeze and the general situation some. One other thing that I did remember there when reference was made to wages, I remember he had stopped me three or four weeks before as I was entering the rest room in the plant there, just more or less momentarily, and made the remark, as I remember, that he hoped that when we all got around to the wage problem we would give some consideration to a rate differential insofar as the 46 ounce set-off job was concerned, and I thought of that and mentioned that to him, that I had given some thought to that, and realizing that there are some 700 or 800 cases per hour handled by the man on that job, that is on those particular lines, as compared with around — well, 400 to 500 or 550 cases per hour on the other lines, it had appeared logical to me that some rate differential may be justified there.

[1077] Q Was that Holly's job, that set-off on the 46 ounce line?

A I believe he did, part of the time.

Q Was that his normal job?

A Frankly, I don't know what his normal job was. He worked in the warehouse wherever they might assign him to. Those lines run, however, more than any others, and be-

cause of seniority people off the other lines would have worked on there, seniority would give them work on there.

Q Mr. Stephenson, does the company own any houses or apartments?

A Yes.

Q How many units do they have?

A I think 31 is the correct number now.

Q Is that 31 housing units, or 31 apartment buildings, or what? Is that just individual rental units, 31?

A Well, it is individual rental units.

TRIAL EXAMINER:

31 families?

THE WITNESS:

Yes. We have some houses, and then we have another set of buildings which are actually duplexes, and we call those apartments in our terminology.

Q Does the company have any policy in regard to the rental of these units?

A We have always maintained a policy pretty much of renting to our employees.

Q Do you have a waiting list of employees desiring these [1078] accommodations?

A We have a constant one.

Q I mean, do you have a waiting list?

A A waiting list, yes. We always have had applications in. Any time I have checked it and known anything about it we have always had a number of applications in.

Q Has the company notified any of the tenants to vacate company housing?

A Yes, some of the tenants.

Q How many, do you know?

A I believe nine is the outstanding number as of now.

Q (By Trial Examiner) Were they all strikers?

A They were replacements, they have been replaced.

Q (By Mr. Bowden) Were any of the tenants who were notified to vacate given such notice prior to the time they had been replaced or discharged?

A No.

Q (By Trial Examiner) Are there any strikers in the 31 units who have not been given notice to vacate?

A Well, yes, there are some people living there who have been replaced, that are living there now.

Q That is not my question. As I understand it, you have given nine notices to vacate.

A Yes, sir.

Q All to strikers. Are there any strikers living there who [1079] have not been given notice to vacate?

A Yes, where we have somebody in the family that is still working for the company. We have some split situations there.

TRIAL EXAMINER:

I see.

Q (By Mr. Bowden) You are referring to where the wife is on strike and the husband is working, or the situation is reversed?

A Yes, I recall one instance, one example of that. The wife is on strike and the husband has been working, and they have not been notified to move.

MR. BOWDEN:

Your Honor, I think that concludes my direct.

TRIAL EXAMINER:
All right. Mrs. Fassig?

CROSS EXAMINATION

Q (By Mrs. Fassig) Mr. Stephenson, in respect to the number of families which have been notified to vacate, weren't there ten families, and one has moved following the receipt of your request to vacate, so that leaves only nine?

A That is correct, yes.

Q Mr. Montgomery?

A Montgomery moved, yes. I said nine I believed was the outstanding number at this time.

Q All right, I wanted to make that clear. Referring to your number of employes who signed those petitions, Mr. Stephenson, how many of those people who signed the petitions had been employed by the company prior to the commencement of the strike?

[1080] THE WITNESS:
Will you repeat that question, please?

(Question read.)

A That is a recap that I just recently made, and of the signatures on the petition old employes, that is employes prior to 1/17, January 17th, numbered 367, and new employes 226, making a total of 593. That, of course, takes into consideration the terminations and duplications.

Q Was it your opinion, Mr. Stephenson, that the receipt of these petitions from the employes had the same legal effect, as far as your duty to continue to bargain with the union, that a decertification election conducted by the Na-

tional Labor Relations Board would have had in decertifying the union or establishing that the employes no longer wanted the Teamsters to represent them?

A Mrs. Fassig, I hardly know how to answer your question. I think it is a legal question. It is not one that I ever attempted to decide within myself. I depended entirely on legal advice for any conclusion of that kind.

Q Then I will ask what legal advice you received pertaining to these petitions?

A As I understood it, they were valid petitions expressing the will of a group of employes, a majority of employes, and that in the opinion of our counsel there would be a considerable question of the legality of our continuing to deal with a union who had — after such a petition had been submitted [1081] to us by a majority.

Q I will ask whether you at any time considered or thought you had any duty to file a petition yourself with the Labor Board, to determine whether or not the union still represented a majority of your employes?

A We were not so advised by counsel, although that matter may still be in question.

Q You knew that the Teamsters union had filed its charge against you in January, January 14th as I recall the date of the charge, which was that your company was failing to discharge its duty to bargain collectively with it under the requirements of the Act?

A We had whatever notices were sent, yes.

Q Now at that January 28th meeting I think you said that there was discussion of the union's third contract proposal?

A I think it was referred to primarily. I don't believe there was any great amount of discussion concerning that one.

Q I would appreciate, Mr. Stephenson, if you would tell us just what discussion you can recall there was concerning it.

A It was pointed out that the last —

Q By whom?

A By Mr. Bowden. It was pointed out —

Q Can you recall and tell us what was said, instead of generalizing it so much?

A Mrs. Fassig, I am afraid I can't. I might refer to my [1082] minutes here.

Q Well, do so. Do you mean refer to your minutes you made during the meeting?

A No, ma'am.

Q Do you have any notes made during that meeting?

A Only on some of the proposals, but not a scheduled history.

Q Well, did you take notes during that January 28th meeting as to what occurred during the meeting?

A I took some notes, yes.

Q Will you refer to those notes?

A They are all noted on the contracts. The only notes I have are on the contracts. For that I will have to chase through here.

Q I am asking about the union's third contract proposal, rather than the company's proposal. Do you have your copy of that?

A I am supposed to have. There are so many pieces of paper here — (Produces document)

Q Is that your copy of the union's third proposal?

A That is my copy, that is right.

TRIAL EXAMINER:

Speak up, please, sir.

THE WITNESS:

Yes, this is my copy of the union's third proposal.

Q I notice various notations appear on the first page of that, some in ink and some in pencil.

[1083] A That is right.

Q Were any of those notations placed there during that January 28th meeting?

A No.

Q The ink notations that appear thereon were placed on there when?

A They are not ink; they are blue pencil.

Q In blue pencil, all right.

A They were placed on there afterwards.

Q When; at what time?

A I don't know exactly when, but after the meeting. They are in reference to checking the contract.

Q At some subsequent time, between yourself and Mr. Bowden?

A Pardon?

Q Were these notations put on at some time subsequent to January 28th?

A Yes, in checking this contract against other proposals, yes. They were not taken down at the meeting.

Q Is this pencil notation at the bottom of the page yours?

A There is one notation on the first page there, "This proposal never discussed with union, except some general, 1/28/58."

Q Now then, can you tell us what the discussion was pertaining to that contract proposal on January 28th?

A I don't believe this one was discussed, not to the extent — [1084] In other words, I didn't make any notes on it.

Q Well, can you recall for us whether or not the union requested a discussion of that proposal?

A I believe that was discussed to begin with, but when it was pointed out that —

Q Well, what was the discussion?

TRIAL EXAMINER:

Let him finish his answer. "When it was pointed out," he said. Finish your answer.

A I don't recall specifically, Mrs. Fassig. There was a general discussion concerning it, and when it was pointed out that there were so many changes on it as compared with the prior agreements that we had, we went back to the other proposals and worked over those, to see — to get a better picture of the situation at that time.

Q And who pointed that out?

A The differences?

Q Yes.

A Mr. Bowden.

Q And what differences did he point out?

A Specifically I can't tell you offhand.

Q I will ask whether Mr. Bowden then declined to go down this contract proposal and to discuss it article by article with the Union; or why was it put aside?

A I believe by mutual consent.

Q Well, you believe that, but on what do you base that con- [1085] clusion? I mean, what was said in that connection?

A I don't remember any specific conversation, that is the words of any specific conversation, but that is my impression of the way the conference went.

Q (By Trial Examiner) Do you recall any suggestion by Morgan that you turn to the company proposal?

A I think there was a — I don't recall any directly, no, sir.

Q In any case, is that what you did?

A We went to the company proposal, yes.

Q (By Mrs. Fassig) Mr. Stephenson, I will ask you concerning this telegram from Mr. Wingate to you, which is General Counsel's Exhibit 21-A, concerning the pencil notation there, "Phone," which you have indicated to be inserted there following the statement that "company has not answered its request made last week," referring to the union's request made last week. Does that notation "Phone" there mean that the union had made a telephoned request the previous week?

A It would seem to indicate that, yes.

Q Is that in your handwriting, the word "Phone"?

A Yes.

TRIAL EXAMINER:

Well, as I recall it, you testified that after your wage offer of January 4th you did have a phone call from Mr. Wingate, did you not?

THE WITNESS:

That is not that time.

[1086] MRS. FASSIG:

This is a telegram of December 11th.

TRIAL EXAMINER:

Oh, December 11th. All right.

THE WITNESS:

And this followed the conference that Mr. Wingate and I had.

MRS. FASSIG:
Yes.

THE WITNESS:
And this "Phone" probably referred to a call in that week, the prior week, the week prior to the 11th.

Q Well, at the end of the meeting between you and Mr. Wingate had there been conversation — As I recall your testimony was to the effect that you would get in touch with Mr. Bowden and see when a meeting could be arranged between the full committees.

A That is right.

Q And did you give Mr. Wingate any indication as to how soon you thought you could arrange a meeting?

A Not at that time, no, I don't believe there was any indication. I would have to get in touch with Mr. Bowden.

Q Were you to do it as soon as one could be arranged?

A Yes.

Q And then, because of this —

A That "Phone" could very well refer, this notation there, that I had phoned Mr. Bowden. I am not sure just what the "Phone" designation on there means.

Q I will ask you if it couldn't mean that Mr. Wingate had followed up by telephoning you —

[1087] A Yes.

Q — to see whether or not a meeting had been arranged as yet?

A It well could, yes.

Q During the meeting which you testified to between yourself and Mr. Wingate regarding the union's third proposal there had been some discussion between you and Mr. Wingate regarding individual articles in that contract, had there not?

A Very brief and casual, yes.

Q And then you were to arrange a meeting so that the full committees could negotiate with respect to that contract, is that correct?

A Not necessarily that contract, no. It was to continue our negotiations.

Q Then at the December 18th meeting was there any detailed discussion whatever of the union's third contract proposal?

A Detailed only in that Mr. Bowden pointed out to Mr. Wingate the differences in that as compared with what we had received before, or what we had discussed before.

Q Can you tell us what differences Mr. Bowden pointed out during that December 18th meeting?

A Well, there are a number of them, and offhand I would hate just to trust my memory to do it.

Q Well, can you by referring —

A (Continued) Sections have been changed, and they have [1088] been put from various parts of the agreement, put from one to place to another place.

Q Excuse me for interrupting you, Mr. Stephenson. Could you, by referring to your copy —

A Arbitration is one that stands out in my mind. It had been changed from what we had agreed to prior.

Q Tell us something that was pointed out by Mr. Bowden at the December 18th meeting.

A I can't tell you offhand that Mr. Bowden pointed out that specific one.

Q I am asking you if you would turn to your copy of the union's third proposal, if by referring to that you can refresh your recollection and if you could tell us then which

of those provisions Mr. Bowden did discuss at the December 18th meeting?

A I could not. I couldn't identify those.

TRIAL EXAMINER:

Did you make any notes during that meeting on the face of the contract proposal?

THE WITNESS:

No, sir, I don't recall any. It was discussed for only a very few minutes, and just in that vein, and at that point the union had indicated, I believe, in the manner I have described, that that was their final proposal.

Q You can't recall any specific provisions of that proposal that Mr. Bowden discussed or pointed out objections to in the December 18th meeting?

[1089] A I wouldn't identify one, no.

Q Did Mr. Bowden in fact indicate that the company did not intend to go down and discuss and negotiate with respect to that contract at that meeting because of the freeze?

A Mrs. Fassig, the meeting of December 18th, while it had started off — been set up and started off as a negotiating meeting, a meeting for that purpose, never got to that stage, the stage of negotiations.

MRS. FASSIG:

May I have the question re-read to the witness?

TRIAL EXAMINER:

Yes.

(Last question read.)

A No.

Q Or for any other reason?

A Not that we never intended to discuss it with them.

Q I mean at that meeting did he indicate that the company representatives were not then prepared or wanting or willing to discuss the specific articles of the union's third contract proposal at that particular meeting?

A Did he indicate that?

Q Yes.

A No.

Q Wasn't the union wanting to negotiate with respect to that proposal at that meeting?

A Well, the meeting soon got to the stage where Mr. Wingate —

[1090] Q Just answer my question.

THE WITNESS:

All right. Read the question, please.

(Question read.)

A The facts as they added up to us were that that was a final proposal that they were demanding that we sign that day, not negotiate on.

Q (By Trial Examiner) Was there any reference to four o'clock?

A Yes, sir.

Q What was that reference?

A If we didn't get the whole thing completed — contract, wage proposal and so on — by four o'clock, why, that is the report that would have to be put back to the membership.

Q (By Mrs. Fassig) Mr. Stephenson, during the meeting which had previously been held between you and David Wingate, as I recall your testimony you said that the discussion between you and David Wingate was that it was merely tentative, subject to negotiation by the full bargaining committees; is that correct?

A It had no significance as a bargaining session.

Q That is right.

A What conference we had, it wasn't that involved, it wasn't in that detail; it was a hit or miss pursual of some of the pages of the contract.

Q And during that discussion I will ask whether or not Mr. [1091] Wingate indicated with respect to any of those contract provisions that the union would be willing to consider your objections to any of those specific provisions and change them to suit your wishes?

A I didn't give Mr. Wingate objections, specific objections to that contract in the discussion that we had.

Q You didn't point out any specific objections whatever to any of the provisions of that union contract?

A I believe I said before I had certain notes on that which were, and which I told him, were simply for my own information in analyzing the contract, and for discussion later with Mr. Bowden when we got together to analyze it.

Q All right, what were those —

A And they were not there as objections or suggestions on my part.

Q What did the notes indicate? What was the significance of the notes?

A A memorandum to me.

Q Concerning what?

A Concerning a number of things.

Q Were they concerning the extent to which this third proposal incorporated prior agreements, or did they indicate any extent to which you thought they differed or varied from any previous agreement reached?

A Well, they included that, too. There are some in that [1092] connection.

Q Will you refer again to your copy on which you placed those notes during the meeting with Mr. Wingate?

A During the meeting?

Q Yes, during that conference.

A I didn't place any notes on there.

Q I thought you said you did put some notes on there then?

A No, they were on my contract before I had a discussion with Mr. Wingate. I say they were personal memoranda that I had put on there for my own personal information. They were just notations. Instead of putting them on a pad I put them on the contract. Then I would check through various parts of them.

Q Did you discuss with Mr. Wingate any of the matters which you had noted to yourself?

A He saw some of those notes, yes.

Q And was it not concerning what your thought was on those particular contract provisions?

A We had some discussion concerning some of them, yes.

Q Was there complete agreement between you and Mr. Wingate with respect to all of those provisions then?

A Of the original provisions, provisions as agreed, or the ones just marked?

Q Well, if you will turn to your copy I can ask you.

A There was no specific agreement between Mr. Wingate and [1093] myself concerning any of them.

Q What was the discussion between yourself and Mr. Wingate concerning that third proposal, then?

A Mr. Wingate kind of wanted to leaf over the third proposal, and I opened it out on my desk and did that. I had made certain notes on there. I made none of them at that time, at the time I was talking to him.

Q Referring to that contract, can you recall for us any of the discussion between yourself and Mr. Wingate?

A Mr. Wingate said that he would make some notes concerning some ideas that I had, if it was all right. He just wanted to get a better picture of the over-all contract.

Q All right. Mr. Stephenson, directing your attention to the paragraph headed "Witnesseth." I noticed that you have the words "hours of labor" struck with a line through them, and inserted above there you have the word "work week."

A "Work week," that is right.

Q Was that one subject that you may have discussed with Mr. Wingate?

A We may have referred to that; I mean, it is possible.

Q Do you recall?

A I don't recall definitely, no.

Q I notice in the left margin of that same provision, the Witnesseth clause, you have a notation "Agreed to, 10 9 57." Was that notation on there before you met with Mr. Wingate?

[1094] A No, that was put on there just recently, in the last two weeks I would say. That was just checking.

Q All right. Now on the second page the subject is "Recognition," Article II. I notice that you have the bottom paragraph, which is (d), completely circled.

A Yes.

Q Was that paragraph the subject of discussion between yourself and Mr. Wingate that day?

A Possibly. I think I had those marks on there at the time, and my thought in there was, that is just one of the things about this whole contract, this was not a proper place or the most logical place for such a paragraph, but still and all —

Q Did you suggest that it should be transferred to some other place in the contract?

A In the final analysis I thought that is where it might wind up, I mean such a paragraph might wind up.

Q Under the Grievance Procedure?

A That is where it naturally fits.

Q Do you recall whether or not Mr. Wingate agreed with you that it might more logically be transferred to the Grievance article?

A I don't recall an agreement or a request for agreement on it. Some of this is just typographical, too.

Q Yes. Directing your attention then to Article IV, the second paragraph under sub-heading (b) regarding Reporting [1095] Time, I notice that you have two words inserted in pencil, the words "on the," which you have indicated to be inserted following the word "employees" and preceding the words "next regular scheduled work shift". Were the words "on the" an indication or suggestion by you that those words should be inserted in that paragraph?

A Not necessarily. I was simply straightening the English out as I went over this, which I often do. It is kind of a habit of mine to do such things.

Q I will ask whether or not you also suggested changing the word "regular" to "regularly," so that it would properly modify the "work shift," "regularly scheduled work shift"?

A That is the same observation there.

Q Do you recall whether or not you made that suggestion to Mr. Wingate during your meeting with him?

A I don't recall that as a suggestion.

Q Do you recall discussing this Article IV at all with him?

A Not specifically.

Q All right. The next article is the one on Holidays, Article V. Do you remember any discussion with Mr. Wingate regarding holidays?

A Yes, that is one of the money items that we discussed some, and there I indicated that — He mentioned that this contract had cut down to two, the request for two paid holidays.

Q That is right.

[1096] A And I think, if my memory serves me right, at that time there was some information out around the industry that one paid holiday had been discussed, and I indicated that in a final analysis of the contract, of the wage proposal, we might eventually agree to one paid holiday.

Q And that would explain why you have the words "and New Years Day" circled, leaving that sentence reading merely that "Christmas Day shall be a paid holiday?"

A That is right.

Q And the rest of the article would be changed to conform with that provision, is that correct? Those other notations merely falling in line with that? In other words, you struck also New Years Day from the fourth line there of the same article?

A That is right. If and when that was ever worked out, and not necessarily meaning that any of the following paragraphs, or even the first one, would be the one in a contract.

Q Yes, I follow you on that.

A These were on here as notations for my own information.

Q In the next article, No. VII, dealing with Seniority, I notice that you have added in pencil, following the first sentence, which is Section 1, you have added the words "Add adequately perform work." Now is that one of the items which you discussed with Mr. Wingate that day?

A No, that is one of these blue pencils on there, just [1097] recently put on.

Q Can you read for me the words you have added in the right hand margin, following opposite the third section?

A "Provided they can adequately perform their job."

Q And where was that to be added?

A Well, I had a notation there, applying it after the word "job."

Q Adding it to the sentence in Section 3, "The new position or vacancy shall be filled by senior employes who make application for the job," then with your notation, "provided they can adequately perform their job."

A Right.

Q Do you recall whether that is one of the items which you suggested to Mr. Wingate should be added or you would like to have added to the provision?

A Mrs. Fassig, you keep asking me if that is what I suggested to Mr. Wingate. I don't recall making any particular suggestions. These were notes I had down there. Mr. Wingate saw them and he probably copied some of them.

TRIAL EXAMINER:

Is this something you discussed with Mr. Wingate at that time?

THE WITNESS:

Specifically, I don't know. We leafed over the contract, I

kept no particular note of just what. I guess we turned just about all the pages.

Q For example, in the same paragraph you have a notation [1098] adding "in writing," the words "in writing" to be added, that "The oldest employe in seniority desiring the new position or vacancy must make it known to the company," then insert the words "in writing". Did you suggest that to Mr. Wingate that day?

A I made no suggestions, Mrs. Fassig.

TRIAL EXAMINER:

Mrs. Fassig, you two don't agree on the terminology. Ask him if he discussed it with Mr. Wingate. He won't agree that he suggested anything.

Q Did you suggest that possible change at all?

A I wouldn't say that I suggested it. I was simply letting Mr. Wingate see my thinking.

TRIAL EXAMINER:

Well, did you discuss it with him?

Q Did you discuss it at all with him?

A That could be.

Q Do you mean, Mr. Stephenson, you merely handed over your copy of the contract proposal, and let Mr. Wingate copy all your notes?

A No. I was on this side of the desk, with the thing open, and he was on the opposite side, right opposite me, seeing these things. It would be easy enough.

Q Would he have to read it, then, upside down, or did you read to him?

A I guess I possibly read over some of them, and he possibly raised up and looked at some of them.

[1099] Q And you went through the entire contract that way?

A No, I don't recall that we went through the entire contract.

Q Do you recall where you stopped there, then, if it wasn't through the entire contract?

A No, I don't recall that.

Q Was there any discussion between you regarding vacations with pay?

A That was referred to, yes. I remember that that was discussed in a general way, and there again I indicated to him that in some — whenever we got around to finalizing the overall problem, that we would probably go along with the 1750 hours to qualify.

Q I will ask you whether or not you discussed at all with Mr. Wingate the paragraph concerning arbitration, which is the paragraph indicated with (f)?

TRIAL EXAMINER:

Under what article?

MRS. FASSIG:

It really belongs under Article XII, Adjustment of Grievances.

THE WITNESS:

That was changed.

Q Did you discuss that section with him at all that day?

A I had a question mark concerning it. It could have been discussed. I could have pointed out that that was different from the prior agreement that we had had on arbitration.

Q You think it is quite possible that you did point out [1100] those variations from what the prior agreement had been on that particular section?

A It is possible, yes.

Q Now then, on the first page of the Adjustment of Grievances article, I notice that you have the figure 2 inserted above the figure 3 in sub (a) or Step No. 1. Do you recall any discussion with Mr. Wingate regarding changing the period of time within which the aggrieved employe should reduce his grievance to writing, to two days instead of three days?

A I had some thought of that kind, and I expect I mentioned that to him, merely as a suggestion. I had that note on it.

Q And then, of course, that would make another change a little bit lower in the paragraph, they should attempt to adjust the grievance within two days. Is that "within two days" another suggestion?

A One follows the other.

Q Yes, to conform. Do you recall at all what Mr. Wingate had to say with reference to this sugggestion?

A No.

MRS. FASSIG:

You don't recall that.

TRIAL EXAMINER:

Do you now agree you made a suggestion?

THE WITNESS:

On these two days over three?

TRIAL EXAMINER:

Yes.

THE WITNESS:

I let him see that figure 2, yes. I had some thought that maybe two days might be enough, even though [1101] a paragraph with three days had been agreed on.

Q Mr. Stephenson, I notice you have indicated with an arrow the insertion of a paragraph between paragraph (b) and paragraph (c).

A That is the one I discussed earlier.

Q Yes. Did you indicate there that there should be transferred and inserted in here the paragraph (d) from Article II? Is that your notation?

A That is my notation.

Q Do you recall whether or not there was any discussion between you and Mr. Wingate about transferring that (d) from Article II to this article?

A I don't recall any specific discussion on it, no.

Q Do you think there may have been?

A It is possible. That is just a logical thing, anyway.

Q With respect to Article XIV, dealing with Protection of Rights, I notice that on your copy here you have a bracket around the last line and a half approximately of that provision.

A That is right.

Q And a line scribbled over the portion reading, "and the company shall not request any employe or employes to go through a picket line." Now do you recall whether or not there was any discussion between yourself and Mr. Wingate regarding that Article XIV?

[1102] A I think there was. I told him that we hadn't

agreed on such a paragraph. In any event, why, we certainly would never go along with this last line here.

Q The part you have bracketed, struck out?

A It was our position then we would not go along with that terminology. In some earlier conferences I remember that we had discussed, that probably was back in Roberts' time as negotiator, that we had indicated that this part of it we would go along with if it was understood that it pertained to plants other than our own.

Q Which part do you mean that you indicated you would go along with; the first part of that sentence, which has not been struck in your copy here?

A Yes. I said that had been indicated earlier, in earlier discussions, with the understanding that it pertained to plants other than our own.

Q All right.

A However, I don't know that I explained that to Mr. Wingate at this time, but that was my thinking on it. You are getting into my memorandum here.

Q With reference to Article XVII, the No Strike, No Lockout —

A I saw nothing in there that we could — that I felt we could accept in that article.

Q (By Trial Examiner) Well, did you tell Mr. Wingate that?

A I believe I did, yes, sir.

[1103] Q Nothing that you could accept?

A That article just didn't — It is a No Strike, No Lockout clause, and it just didn't cover our desires on that.

Q (By Mrs. Fassig) In whose handwriting are the words which are written at the beginning of the first section, "It is mutually agreed," that are written in above the

words struck, "The Union and the Company agree"? Is that your pencil?

A I would say this is mine.

Q And the words to be inserted, "in any event"?

A That was not in any discussion with Mr. Wingate. That was in my initial thinking, when I started out with this paragraph to see if I could reconcile it in any way to my own thinking.

Q Did you say anything at all to Mr. Wingate regarding this article?

A I think possibly that one was mentioned as one of the articles that we had never been able to get any agreement on in any of the proposal discussions that we had had.

Q I notice that under Section 2 of the same article you have bracketed the first sentence, which reads, "Refusal of either party to submit to grievance procedure at any stage, or failure to comply with Arbitrator's final decision, withdraws the benefits of this Article."

A That is all a part of the whole thing. It is not an [1104] article that I was prepared to make any decision even to myself on.

Q (By Trial Examiner) Did you discuss that with Mr. Wingate at that time?

A The whole article.

Q Did you discuss that sentence that she just questioned you about?

A No, sir. I have no idea that I did, no, sir.

Q (By Miss Fassig) All right. On the next article, dealing with Separability and Savings Clause, I notice you have a bracket around the last sentence of that article, with a pencil notation "Out."

A That is simply my thinking. There is a question mark over here on the margin in connection with the whole thing.

MRS. FASSIG:

Yes.

Q (By Trial Examiner) Did you discuss your thinking with Mr. Wingate?

A This is one of the clauses, too, that we had never been able to arrive at any conclusion on in any of our bargaining.

Q I am talking about the last sentence, that you drew this bracket around. Is that some of your thinking that you discussed with Mr. Wingate in that meeting?

A I would say so, yes, sir. That is quite possible. In any event, in any such clause we would want to omit such wording.

Q (By Mrs. Fassig) The last sentence in that. In Article [1105] XX, dealing with Discharge or Other Disciplinary Action, I notice you have indicated the same possible change in paragraph (b) in that, and such notations, corrections, would leave the provision reading. "If the Company feels that it is necessary to discharge an employe, it shall state its reasons for discharge in writing and present same to the union if the union so requests." Now was there any discussion between you and Mr. Wingate regarding that provision?

A He probably saw that thinking there, yes.

Q Well, do you recall whether or not there was any discussion between you and Mr. Wingate regarding it?

A Not discussion. I might have come over that part, yes; it is one of the things I have marked in this.

* * * *

[1107] Q All right. Then in item 4 of that article the notation in pencil "who is off the clock for meal periods." Did you suggest at all to Mr. Wingate that that phrase should

be inserted following the word "employe," or was there any discussion between you and Mr. Wingate regarding any such modification of that provision?

A Specifically, I don't remember.

Q Is it possible you did discuss it with Mr. Wingate?

A It is possible.

* * * *

[1112] M. A. STEPHENSON

a witness called by the Respondent, resumed the stand and testified further as follows:

CROSS EXAMINATION (Continued)

Q (By Mrs. Fassig) Mr. Stephenson, at the close of the hearing yesterday you were testifying regarding your meeting with David Wingate on December 4th, and I had questioned you concerning various individual articles of the union's third contract proposal which you may have discussed with Mr. Wingate. At this time, carrying on in regard to that meeting, I would like to ask you what conversation there was between you and Mr. Wingate regarding wages?

A We referred to wages. I pointed out that the offer that we had with that contract was 25 cents per hour and a 25 per cent. increase on piece work rates as I recalled; that that was higher than a lot of the offers that were being publicized around the industry at that time. Mr. Wingate more or less admitted that, and indicated that —

Q Excuse me a moment. Would you try to tell us as close as you can what he said, rather than characterizing it as indicating something.

A I might say, then, that he said that possibly they might

come down as low as 15 cents in the final analysis or in the [1113] final decision on it.

Q You say there was some discussion of wage rates that had come down in the industry. Can you tell me a little bit more fully what you said in that connection?

A Well, I don't recall the conversation in detail, just back and forth, but at that time I believe there had been offers made of 8½ cents per hour in at least two instances.

Q Did you refer to what companies had made offers of 8½ cents?

A I don't recall that they were mentioned by name, but that is possible. That would be Minute Maid and Adams.

Q Do you recall whether or not the union by that date, the time you had this conversation with Mr. Wingate, had reduced their wage demand upon any other employer?

A I had no specific information, no. I had heard, and I don't know where I got it, but there was some offer of maybe 12 or 12½ cents.

Q To whom? Was that to Minute Maid?

A I don't know. I just picked up that rumor. I had no definite information about it.

Q Did you mention that rumor to Mr. Wingate and protest his 25 cents. to you at all?

A I believe I did. I had heard that there was a possibility of 2 or 2½ cents. less than the 15 cents that he mentioned.

Q Was that news to Mr. Wingate?

[1114] A Well, I don't know.

Q I mean, did he indicate to you or did he say to you that that was news to him, and that he would have to check into it?

A I think that is right, yes. He didn't seem to be familiar with the rumor.

Q Would you say, then, that during this discussion with you regarding wages, Mr. Wingate did not take any firm position that the union would not settle for less than the wage request which had been presented to the company?

A Well, I would say he didn't make any decision one way or the other.

Q All right.

A In other words, we had the proposal of 25 cents and this discussion was around that, but there was no decision, no definite decision that it would be changed.

TRIAL EXAMINER:

Was that the first time the union had made a wage proposal?

THE WITNESS:

Yes, sir, accompanying the November 23rd proposal.

Q In other words, that was the first time a wage proposal had been submitted by the union, and during this discussion between you and Mr. Wingate he discussed it back and forth with you, with the indication that they would consider the information that you were furnishing him?

A Well, yes, they would consider, but I believe 15 cents is as high as he indicated —

[1115] Q That he was authorized at that time?

A Well, I don't remember that he told me he was authorized to any 15 cents. I think 15 cents was the lowest figure —

Q That he mentioned?

A — that he indicated that they may come down.

Q Now with respect to these other provisions of the contract which we reviewed during the examination yesterday —

A Yes, ma'am.

Q — as I recall, you said it was at Mr. Wingate's request that you did go down the union's proposal at all.

A Yes.

Q It was at his request. And was it his idea that he make notes on his own copy of the contract?

A It was.

Q I will ask whether or not at the time he did so he stated that they would not yield or make any concession with respect to any of those contract articles?

A No, he made no such statement.

Q I will ask whether, on the other hand, he didn't say in substance that he wanted to note your comments, or whatever ideas you had regarding these various proposals, so that the union could take those ideas into consideration?

A Well, he wanted them — What he was going to do with them I don't know. He wanted them for his own information.

Q Well, by the conclusion of that meeting was it your under- [1116] standing, Mr. Stephenson, that the union had presented to you a contract proposal which it believed to be in final shape, and that it would not consider negotiating any modification or change of that proposal?

A I would say no, that was not my thinking at that time.

Q In fact, it was your understanding that the union would consider modifying that proposal, but that the conversation, I think as you characterized it yesterday, during that conversation you neither one made any final commitments; neither you on behalf of the company made any final commitments with respect to any particular proposal nor did Mr. Wingate make any final commitments; is that correct?

A No final commitments were made.

Q It was more of an exploratory conversation, to determine what differences, if any, there were between the parties?

A That is correct, and as I understood it, any comments that Mr Wingate might have made or did make were his own personal opinion, just as mine were. He was not speaking for the union or his negotiating committee.

Q And at the conclusion of the meeting was it not understood by you, Mr. Stephenson, that final decision as to whether there would be any change made in that contract proposal would be made at a meeting of the full bargaining committees for both parties?

A Any final changes, any final agreements that were arrived [1117] at would certainly have to be worked out in full bargaining sessions.

Q All right. Now I will ask you whether or not at the conclusion of that meeting Mr. Wingate didn't ask you to arrange a meeting of the parties as soon as one could be arranged?

A I am a little hazy on just what arrangements, just how that conference broke up. As I remember it, Mr. Wingate looked at the time, and he had some other conference, and gathered up very fast and went out. There was some indication, of course we had in mind that future negotiating sessions would be set up, and it is quite possible that that was mentioned at that time, I would see what arrangements I could make. I would have to check with my parties, too.

Q Yes. Mr. Stephenson, in fact during the past had it not been customary in most instances for the company representatives to be the ones to schedule the bargaining sessions, the bargaining meetings?

A Well, I wouldn't say that. It was a matter of getting together for some mutually convenient time.

Q Mr. Stephenson, I will ask you whether it is not a fact that your attorney, Mr. Bowden, was present at all of your negotiating meetings?

A Yes.

Q And is it not true that his office is in Jacksonville, [1118] Florida?

A That is true.

Q And that therefore he is not always available just whenever otherwise the union people might like to have a meeting with you; that you have to consider Mr. Bowden's schedule, other clients, other business?

A Mr. Bowden's schedule necessarily must be considered, yes.

Q And on the other hand, most of the union representatives were local people here and would be available at almost any time you and Mr. Bowden could get together and agree to meet with them? As a general proposition isn't that true?

A It would seem so, yes.

Q Yes. So, then, usually most of the bargaining meetings were scheduled to such dates as you and Mr. Bowden could both arrange to be present?

A Yes, but they were — We didn't —

Q There were exceptions to that.

A Yes.

Q But I am asking, as a general rule, if that is not the case?

A Well, in setting up a meeting, necessarily I would have to check with Mr. Bowden; he would have to consult his calendar and determine what dates were possible.

Q Yes.

[1119] A Usually we were talking about a period of, well, a few days or a week or something like that, so we would

determine what might be the — well, the possibilities in that time.

Q All right.

A I would suggest to the union, and we would arrive at a mutually acceptable date.

Q You had had this third contract proposal in your hands since November 23rd, you testified, and before you met with David you had already gone down and studied it and had made notations on it which reflected, at least to some extent, your reaction to the union's proposal, is that true?

A I had checked it over at that time, yes.

Q Yes; you had already made these notations.

A Not completely, but to a degree.

Q Yes. So that then, when you met with David on December 4th, the next thing that would be in order would be a meeting of the bargaining committees for both parties, to work out any changes, if any were to be worked out; is not that correct?

A Before anything could be concluded we would necessarily meet with the negotiating committees.

Q Yes. At that time, December 4th, did you know when Mr. Bowden would be able to meet with you?

A December 4th?

Q Yes, on December 4th, when you talked with David.

A No, I didn't at that time.

[1120] Q So at that time you wouldn't have been able to come to a definite agreement with David as to how soon you could schedule a meeting with the union's committee, is that correct?

A That is correct.

Q At the conclusion of that meeting was it your thought that Mr. Wingate had the responsibility of scheduling a meeting, or wasn't it understood that you would contact Mr.

Bowden and then let Mr. Wingate know as to when another meeting could be held?

A As nearly as I can recall it, there was the prospect of a future meeting discussed.

Q Yes.

A I was going to check and see what dates we might find possible.

Q Yes, sir.

A The — Well, that is about it.

Q All right. So that as long as one hadn't been arranged by you, Mr. Wingate then later telephoned you in respect to when the meeting could be held, as you indicated yesterday in your testimony?

A As I recall it, I am not too definite about that, but there was a call the latter part of the week suggesting this, or talking again about this future negotiating meeting being set up.

Q And you hadn't yet been able to arrange a definite date?

[1121] A I didn't have a definite date to suggest at that time.

Q All right. Now then, the telegram from Mr. Wingate to you dated December 11, which is General Counsel's Exhibit 21-A, then I assume that that telegram was received probably just immediately before your first freeze?

A Well, on the 11th, yes; as I recall, it was replied to — Wait a minute. What is it that wire says? May I have that?

Q Surely (handing witness document).

A Yes, there was a telegram on the 11th suggesting the next day, December 12th, as a meeting date.

Q And at the time you received this telegram you hadn't yet had the freeze; the freeze occurred that night?

A That is right, the night of the 11th, the morning of the 12th, the first serious temperature.

Q So in reply to this telegram, General Counsel's Exhibit 21-A, you replied by a telegram which is General Counsel's Exhibit 21-B?

A Yes, on the same date.

Q On the same date you replied, then scheduling a negotiating meeting for December 18th?

A That is right, and saying that because of prior commitments we couldn't meet on the 12th, and I believe I indicated yesterday that was one of our company Director days.

Q Yes. So then the meeting was scheduled for December 18th. At the time the meeting was scheduled for December 18th the [1122] freeze had not occurred. I will ask you whether at the time you scheduled the meeting, was it your understanding that you had received a proposal from the union which then the full negotiating committees of both parties were to meet and go over and negotiate with respect to?

A Well, the wording of the wire that we got there, to consider the final proposal — I believe that is what the wire says — indicated that we were to consider the proposal as a final proposal.

Q Is it your testimony, then, that you went to the December 18th meeting with the understanding that the union would not consider any modification of that proposal along the lines that you and Mr. Wingate had discussed between yourselves on December 4th?

A It didn't appear that that was — that there were any modifications in prospect.

Q All right. I will ask you whether, at the December 18th meeting, either you or Mr. Bowden made any attempt

whatsoever to ascertain from Mr. Wingate or any other union representative whether the union was standing pat on that particular proposal, without any modification thereof?

A I don't believe we did. It seemed to —

MRS. FASSIG:

All right.

TRIAL EXAMINER.

Let him finish his answer.

MRS. FASSIG:

Well, not "it seemed." Let him say what [1123] happened.

TRIAL EXAMINER:

Let him finish his answer. If it is not responsive you can move to strike it.

A (Continued) It seemed that the position of the union, in their statement to us, was that the offer that they had made at that point, which would be that 11/23 proposal, was their final one, and that is the one that they were demanding that we sign that day.

Q All right. Have you finished your answer?

A Yes.

Q Now just on what statements made by union representatives do you base your statement of what seemed to you?

A On Mr. Wingate's statements to the meeting.

Q And can you tell me when they were made; at the beginning of the meeting?

A Well, Mr. Wingate spoke first at the meeting; I mean, that was the first lengthy discussion at the meeting.

Q All right. Will you tell me what he said that gave you the understanding that you just stated a second ago?

A Well, when he said — went over this charge that there had been stalling, the people weren't going to let the freeze interfere with their ideas of bargaining; what they wanted, they wanted a final decision; or that unless a final decision or approval was made on the final contract or proposal that was in the picture at that time, the last one received by us, by [1124] four o'clock they would have to report that back to their membership.

Q Now was that a statement made by Mr. Wingate, I might say right at the beginning of the meeting?

A In the early part of the meeting. Mr. Wingate talked, as I remember, for some fifteen or twenty minutes.

Q Yes.

A And he more or less concluded his remarks with that.

Q Mr. Stephenson, I will ask you whether, prior to making such statement, Mr. Wingate had not asked you or Mr. Bowden, who as I understand was serving as the spokesman for the company, as to what the company's position was with respect to the union's third proposal?

A Now I don't recall.

Q You mean to say that without even asking the company for a statement of its position with respect to the proposal, he just comes right out and gives an ultimatum that the contract has to be signed by four o'clock or there is going to be a strike?

A That is the way I remember it.

Q Well, did you express any surprise to Mr. Wingate at his taking such a position, in view of his prior meeting and conversation with you, when he, you say at his insistence, explored your reactions to the union's proposal?

A I did not. I didn't mention that meeting.

[1125] Q And yet you testified earlier that you did understand, at the conclusion of that prior meeting, that at that time the union had not taken any final position with respect to the proposal; you understood that the union would be willing to consider your ideas for its modification.

A I don't believe I said that. I didn't intend to. I said that any indications we had in that meeting between David and myself, so far as I could understand, were strictly David's ideas.

Q Yes.

A He wasn't speaking for the committee.

Q But nevertheless, he had been the principal spokesman in speaking for the union throughout the negotiations, for at least several months, had he not?

A That is right, but —

Q And had you not understood that he was going to report back to the committee your suggestions or your ideas regarding any changes you might want?

A I didn't know.

Q To see if the union might go along with your suggestions?

A I didn't know whether he was going to report back or not.

Q Didn't he indicate to you or state to you that he would?

A He was going to take those things in consideration. Just what he was going to do after that I don't know; he didn't express that to me.

[1126] Q So at the beginning of the December 18th meeting, I ask you again, didn't Mr. Wingate try to find out from you or Mr. Bowden the company's reaction to the various provisions of that contract proposal?

A At the beginning of the meeting?

Q Yes.

A No.

Q Isn't that what he was concerned about, the contract?

A What Mr. Wingate was concerned about?

Q Yes, what he expressed concern about, a contract, the provisions of the contract?

A Yes, in his remarks he referred to the last proposal, final proposal that we had.

Q And didn't he try to find out what objections, if any, the company had to the union's final contract proposal?

A After he finished his statement there, in which he had charged stalling and so on on our part, Mr. Bowden replied and pointed out some things in connection with the meetings and in connection with the proposal, the last proposal, being quite different from what we had prior agreements on.

Q All right. Now can you this morning —

TRIAL EXAMINER:

Had you finished your answer?

THE WITNESS:

I thought I had.

TRIAL EXAMINER:

All right, go ahead.

MRS. FASSIG:

I understood he had.

[1127] Q Can you now, this morning, recall any of the remarks made by Mr. Bowden with respect to the union's third contract proposal?

A Specific ones at that time I don't recall He went over

several different parts of it, pointing out that it was different than agreements that we had reached before.

Q I will ask whether or not Mr. Bowden went down the contract proposal of the union, and indicated specifically any provisions thereof that he took exception to, or whether it was just in a very general, broadside statement that the contract differed?

A He indicated some of them specifically.

TRIAL EXAMINER:

Well, was he indicating provisions when he took exception to the provisions that had been changed from prior agreements?

THE WITNESS:

Principally ones that had been changed from prior agreements.

Q Now can you remember any of those which he referred to in that vein?

A I don't recall just which ones were pointed out. There was sort of a brief general review.

Q I will ask during this discussion between Mr. Wingate and Mr. Bowden if Mr. Wingate wasn't trying to get the company to sit down and negotiate with respect to that third proposal?

A No.

[1128] Q What was he doing?

A He was wondering what was wrong with it. Mr. Bowden was explaining what was wrong with the last proposal. Mr. Bowden explained what in our opinion was wrong, how it was so different.

Q All right. After Mr. Bowden pointed out some things he thought were different, I will ask whether or not Mr.

Bowden inquired of Mr. Wingate as to whether the union would be able or would be willing to change those provisions?

A No, I don't recall that.

Q What did happen at that point?

A I believe Mr. Wingate asked Mr. Bowden then if the company had any new proposals to offer at that time, and Mr. Bowden replied that we hadn't prepared any new proposals or changes for that meeting.

Q Did he give any reason?

A No.

Q Was reference made then to the freeze?

A Well, about that point, as I remember it, is when Mr. Bowden asked Mr. Walker to speak.

Q All right. And that is when Mr. Walker made his statement?

A Yes.

Q To summarize your testimony, Mr. Stephenson, would you say that at that December 18th meeting there were no real nego- [1129] tiations with respect to the union's last contract proposal?

A No real negotiations, no.

Q Yes. There was no discussion of the provisions, with the idea of trying to see to what extent the parties could reach an agreement on it, was there?

A No, there had just been the demand that we should conclude the matter that day.

Q And I will ask if Mr. Bowden didn't take the position that the company couldn't or wouldn't negotiate with respect to the union's proposal on the ground that it was different, so different from prior agreements reached between the parties that it was useless to try to negotiate regarding it?

A No, I don't recall that he took that position.

Q Well, did he take the position, then, that it was merely postponing to a future date as to when the company would negotiate regarding it?

A The way the proposition had been put to us, there was little opportunity, it appeared, to negotiate on that contract.

MRS. FASSIG:

May I have my question re-read?

A (Continued) It was "Accept it or else."

TRIAL EXAMINER:

Read the question and the answer, please, sir.

(Last two questions read.)

Q Do you expect this Trial Examiner to believe, Mr. Stephenson —

[1130] MR. BOWDEN:

Your Honor, I am going to object to that type of question.

TRIAL EXAMINER:

Sustained.

Q Well, is it your testimony, Mr. Stephenson, that Mr. Wingate gave an ultimatum that the contract had to be accepted as it was written, before making any attempt to sound out the company regarding its position or its objections with respect to it?

A That was my understanding.

Q And is it your testimony that you came to this meeting expecting to negotiate with the union?

A Yes, it was a negotiating meeting.

Q Well, that doesn't answer my question. Did you come with the expectation of negotiating at that meeting?

A Yes.

Q I will ask you, with respect to what did you expect to negotiate?

A We expected to negotiate whatever might come up. We had this new proposal, we had other proposals in the picture at that time. There was no pre-determined idea as to just what we would negotiate.

Q (By Trial Examiner) Did you hear Mr. Walker's testimony?

A Yes, sir.

Q Do you recall his testifying that his intention was to ask the union to postpone negotiations for a while?

[1131] A Yes, sir, and that was our thought, that there would maybe be some possibility of at least some temporary postponement, insofar as cost items were concerned.

Q Well, at that time were you more interested in the postponement of negotiations or more interested in engaging in negotiations?

A Sir, I don't know that we had a primary objective. Both things were in our minds, certainly in my mind.

Q Well, as I recall Mr. Walker's testimony, it was to the effect that the company was going to request the union to postpone negotiations for a while because of the freeze. Do you recall that?

A Yes, I recall that. It was indicated he was going to discuss some of the industry factors and ours, the factors concerning the industry and ourselves. He did have some information that some postponements of the matters had been arranged for at other places. As far as I was concerned, I was conscious of that possibility, but I did not in my own

mind dismiss this meeting as a negotiating meeting, too, if it developed in a normal manner.

* * * *

[1132] Q I will ask, Mr. Stephenson, whether at that December 18th meeting the company rejected the union's third proposal?

A As such and in total, yes; we could not agree to it at that time.

[1133] Q Well then, after, according to your testimony, completely rejecting the union's third proposal and not negotiating with respect to the substantive terms of a contract at all at the December 18th meeting, you then sent a wage proposal only to the union with your letter of January 4th. Now then, I will ask you to tell us just what you told David Wingate when he telephoned you upon receipt of that January 4th wage proposal; what did you tell him with respect to what, if anything, the company had to offer in the way of a contract?

A He told me that he was familiar with the contract situation, that all of our contract proposals were in his hands.

Q How many contract proposals had you made?

A Well, I was referring, not to specific ones, but the whole history of the negotiations. There had been the original contract we had offered and had negotiated on. There had been the offer in September, I believe, of accepting the Citrus Workers proposal, and then the following offer of accepting it in part and negotiating other parts with the union, which is what we had been working on prior to the receipt of the 11/23 proposal and contract. So our position, we had our position in on all contract features at that time.

We were not changing any of those, we were not withdrawing. There was just no change in them.

Q Was it your thought that the company had no duty or responsibility to prepare any sort of a counter-proposal, after reject- [1134] ing the union's third contract proposal?

A No, we didn't see it that way. We had our position, we felt that the union was fully familiar with it, and we had rejected the 11/23, or had refused at least to agree to it, or at least didn't agree to agree to it on December 18th, on that particular day.

Q In other words, the union had attempted apparently to incorporate in its third contract proposal the various agreements which had been reached between the union and the company, following its attempt to redraft or to negotiate on the basis of the A. F. of L. contract, the old Citrus Workers agreement, is that correct?

A You mean in this 11/23 contract?

Q Yes.

A Well, it didn't follow the agreements that we had made in that connection, up to the time of the last meeting.

Q In other words, there were some variations?

A Well, there were quite a number of changes and variations, yes.

Q All right. But on the other hand, did it incorporate most of the agreements which had been previously negotiated between the parties?

A It incorporated some of them.

* * * *

[1181] W. W. TEAGUE

a witness recalled by the General Counsel in rebuttal, having been previously duly sworn, testified further as follows:

DIRECT EXAMINATION

Q (By Mrs. Fassig) Mr. Teague, did you hear the testimony [1182] of Mr. Stephenson to the effect that on the morning of December 18th, or at least prior to that meeting between the company and the union on December 18th, you had agreed with other employers with whom you were negotiating on behalf of the union —

A Yes, I heard that testimony.

Q That you had agreed to defer or delay negotiations with those other employers.

A Yes, I heard it.

Q I will ask you if that information, or that testimony by Mr. Stephenson, is correct?

A No, it is not.

Q What were the facts?

A On Adams Packing Association a contract had been secured with the exception of two small items outside of wages; I am speaking now of the basic articles of agreement; and we agreed with Adams Packing Company to suspend until January 2nd of 1958 any further meetings on wages only.

Now with respect to Bordo Products, on December 16th we received a telegram from Mr. Hamilton, who is the chief negotiator for Bordo Products, in Winter Haven, withdrawing all prior agreements and proposals, and we held a meeting with Bordo Products, if my memory serves me correctly, on December 17th, and at that meeting we were informed by the company that they would not negotiate on any items, whether it be money or the basic articles of the agreement, until some time later in [1183] January, until they had had an opportunity to find out what the extent of damage was

to the fruit by the freeze. We received a letter some time after that meeting from Mr. Hamilton, expressing his appreciation of the fact that the union saw the necessity of postponing any further discussions with respect to the contract. Now the letter was received afer I went home for Christmas, and Mr. Wingate called me at my home and told me that this letter had come in, and I instructed him to sit down and write a letter back to Mr. Hamilton getting the facts straight, that we were not agreeable to postponing negotiations but had no alternative, since the company said it would not meet with us to negotiate on any items until some time late in January.

Q All right. Now were there any other companies with whom you were negotiating then on behalf of the union, at the time of the freeze?

A Yes, ma'am, Minute Maid Products and Stokely-Bordo. We received identical telegrams from all the companies involved, except Florida Citrus.

Q And what was the substance of those telegrams?

A That they were withdrawing all previous agreements and contract proposals.

Q And what if anything was said with respect to discontinuing negotiations due to the freeze? Was anything said on that?

A There was nothing mentioned in the telegram about discon- [1184] tinuing negotiations.

Q Well, did you agree with either Minute Maid or Stokely-Bordo to defer negotiations until after the freeze damage had been estimated or determined?

A No, ma'am, we did not. There was only one company, and that was Adams Packing Association.

* * * *

[1185] J. D. McLEOD

a witness called by and on behalf of the General Counsel in rebuttal, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q (By Mrs. Fassig) Will you state your name for the Reporter, please.

A J. D. McLeod.

Q Will you spell that?

A M-c-L-e-o-d.

Q Have you previously testified in this hearing?

A Ma'am?

Q Have you previously testified in this hearing?

A No, ma'am.

Q All right. Mr. McLeod, do you recall the circumstances surrounding the beginning of the strike which commenced at this company's plant on January 17th this year?

A You mean the beginning?

Q Yes.

[1186] A Well, on Friday me and Mr. Nolin and Nevills Jackson and Alice Lassiter, we all had a good talk.

Q I am asking, do you remember just when the strike commenced on January 17th, on a Friday?

A No, ma'am, I don't recall just when it started. It started on a Friday.

Q It started on a Friday?

A Yes, ma'am.

Q You worked that Friday, as I understand; is that correct?

A Yes, ma'am.

Q Did you work Saturday?

A Yes, ma'am.

Q Was Gray Nolin your foreman?

A Yes, ma'am.

Q Mr. Nolin has testified that on Monday, January 20th, you informed him that you would have to join the strikers because you had been threatened, and that you were afraid not to strike.

A No, ma'am.

Q Did you ever make any such statement to Mr. Gray Nolin?

A No.

Q Mr. Nolin testified that you informed him that you were afraid not to strike, because you had had a crowd at your house, as I recall, the night before or within —

A No, ma'am.

TRIAL EXAMINER:

Wait for the question.

[1187] Q I will ask you whether or not you had been threatened, or whether or not there had been any crowd of people at your house that caused you to be afraid?

A There hadn't.

TRIAL EXAMINER:

Well, did you tell Mr. Nolin that there had been a crowd there?

THE WITNESS:

No.

* * * *

[1189] GEORGE NEVILLS JACKSON
a witness recalled by the General Counsel in rebuttal and being again duly sworn, was examined and testified further as follows:

DIRECT EXAMINATION

Q (By Mrs. Fassig) Mr. Jackson, have you previously testified during this hearing?

A Yes, ma'am.

Q I think you testified that Gray Nolin was your immediate foreman.

A Yes, ma'am.

Q Mr. Jackson. Mr. Gray Nolin testified that on Monday, January 20th, which is the Monday immediately following the commencement of the strike, you informed him that you would have to strike, too, because people had come by your house all night long and kept you awake, and that you were afraid not to strike.

A No, ma'am, I didn't tell him that.

Q Did you make any statement similar to that in any way, saying that you were afraid not to strike?

[1190] A No, ma'am, I didn't tell him I was afraid the reason I was striking, I was on strike.

* * * *

[1192] THEODORE F. HALL
a witness called by and on behalf of the General Counsel in rebuttal, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q (By Mrs. Fassig) Will you state your name, please?

A Theodore F. Hall.

Q And will you give us your address, Mr. Hall?

A Post Office Box 122, Lake Wales.

Q And Mr. Hall, when you testify I will ask if you will [1193] try to speak loud enough so the Court Reporter can hear you easily.

A Yes, ma'am.

Q Mr. Hall, in what department did you work while you were working for Florida Citrus?

A Concentrate, shipping department.

Q And who was your foreman in that department?

A Claude Scroggins.

Q And were you under Mr. Chelette, R. D. Chelette, in any way?

A Yes, ma'am, he is concentrate superintendent.

Q Mr. Hall, Mr. Chelette has testified here regarding the company's rule concerning circulation of petitions, and he has testified that about the first of June, 1957, a year ago, you and Mrs. Connelly, Newvell Connelly, asked him for permission in regard to circulating some petition concerned with equalizing the shifts on which you were working, and that he granted permission to you and Mrs. Connelly to circulate a petition. I will ask you if that is a true statement of what occurred?

A Well, he didn't ask me — I mean, I didn't ask him. Mrs. Connelly was the one who asked him.

Q Will you tell us what the circumstances were in that case?

A And he got her to get me to help her, but there wasn't no permission to it. He told us to go around and talk to them.

Q What was the problem? What was it you were wanting? Will [1194] you explain to the Trial Examiner?

A Well, one shift was making a whole lot more than the other.

Q Making more time?

A Yes, ma'am. They wanted to rotate.

Q Who wanted to rotate?

A The shift that was making less wanted to rotate more often with the other one.

Q Some other employes on your shift?

A No, I was on the steady day shift. It was one on Mrs. Connelly's shift.

Q All right. What was done concerning that?

A Well, he told us to go around and talk to the people about it and get their opinions on it, and let him know.

Q All right.

A So we done that that afternoon.

Q I will ask you whether or not you talked to the other employes when you were on the clock?

A Well, we started around five o'clock, and we punched out at six, and when we finished up on the night shift it was six o'clock when we punched out.

Q Was that your usual time for punching out?

A Yes, ma'am.

Q (By Trial Examiner) Six o'clock?

A Yes, sir.

[1195] Q You went around one hour on the clock?

A Yes, sir, from five to six.

Q (By Mrs. Fassig) During that time you were going around discussing this with other people, I ask you whether or not you talked with them while they were working?

A No, ma'am; if it interfered with their work we didn't.

Q Will you explain why you didn't talk to them while they were working?

A Mr. Chelette had got hold of me once or twice before that about talking to them while they were busy working.

Q Will you tell us when that occurred, and what was said in that connection?

A Well, I couldn't be positive on what date.

Q Tell us the best you can.

A About a year or a year and a half ago.

Q All right. What was the conversation at that time? Tell us what it was about.

A Well, let's see.

Q You said Mr. Chelette had talked to you previously.

A On a couple of occasions, yes, ma'am.

Q What was the substance of what he had told you?

A Well, not to interfere with them working; if it was any grievance, wait until we got off the clock to talk to them about it.

Q I will ask you whether or not you had ever received any in- [1196] structions from your foreman, Mr. Scroggins, concerning whether you could discuss union matters during working time?

A Well, he told us once or twice, during our breaks; don't be discussing union while we were on company time.

* * * *

[1197] MRS. FASSIG:

At this time, on the basis of the stipulation which I entered into with Mr. Bowden, that the list of dischargees which he furnished and which is now Respondent's Exhibits 3-A and 3-B is a correct list of all those who were replaced and discharged — on the basis of that stipulation I would

like at this time to move to amend the amendment to the complaint by striking from the list of names which appears on pages 2 and 3 of the amendment to the complaint the following names:

Clyde Anderson	Richard C. Cluard
Allen E. Bogue	J. W. Dunwald
Pearl Clark	Richard Evans
Dean Clayhorn	Calvin Foster
Henry L. Clayborn	Olive G. Foster
[1198] W. H. Fribley	W. E. McGuire
Virginia Hall	Rufus McLeod
Inez Harrell	Lowell T. Mathews
B. L. Harrison	F. O. Olive
Thomas L. Harper	Lommie O'Neal
Doyle Johnson	Marvin Owens
Ruth Johnson	B. G. Oxford
Wesley Kilgo	Sallie Ridgeway
S. F. Lassiter	C. R. Shuman
J. F. McCormick	Wm. E. Slocum

E. D. Sterling

and that is all. Now with reference to the list of names I have read, I would like to state that some of those are duplications of names which had appeared in the Appendix A attached to the complaint, and they are struck for the reason that they are duplications, and their names should not be struck from Appendix A attached to the complaint. The names that are duplications, I might specify, are

Slocum Shuman Mathews Lommie O'Neal
Wesley Kilgo B. L. Harrison Thomas L. Harper
and Dean Clayborn.

TRIAL EXAMINER:
Any objection to the motion?

MR. BOWDEN:
No objection.

TRIAL EXAMINER:
It will be granted.

MRS. FASSIG:
Further on the basis of the stipulation [1199] with Mr. Bowden regarding this list of the strikers who were replaced and discharged, I would move now to add the following names to the list of discriminatees.

TRIAL EXAMINER:
In which document; to the amendment?

MRS. FASSIG:
Yes, paragraph 2 of the amendment to the complaint; add the following names:

Allen E. Boyne	Ruby Beasley
Curtis W. Arnold	Mae Carnal
Troy Collins	Frances Deal
J. W. Montgomery	Anna Belle Dunford
Fred S. Moore	Eula Lee McKinney
Roselie Scroggins	Mary Napier
Thurlow E. Weld	Nancy Waters

Evelyn Austin

That is all.

TRIAL EXAMINER:
Any objection?

MR. BOWDEN:
No objection, if they all appear on that list.

MRS. FASSIG:
Yes.

TRIAL EXAMINER:
Yes. The Motion will be allowed.

GENERAL COUNSEL'S EXHIBIT No. 4

FLORIDA CITRUS CANNERS COOPERATIVE

Lake Wales - Florida

February 20, 1958

To Our Employees —

The Teamsters were certified as your bargaining agent for a year which ended on February 6, 1958. By your petitions to us you have stated that you did not want the Teamsters to represent you any longer and that you want to deal directly with the Company. We appreciate this expression of confidence in us.

Under the date of January 4, 1958 we made an offer of a wage increase to your union which was rejected. You have indicated that this offer is acceptable to you. We, therefore, are putting this increase of wage rates into effect. All employees working as of this week beginning February 17, 1958 will be paid at the increased rates when checks are distributed next payday. Retroactive pay will also be figured and paid to these employees back to December 16, 1957. It may require another week or so to get the back pay figured and the checks to cover that ready for you. Please be patient with us — you will get it as soon as the necessary accounting work can be finished.

We thank you for your loyalty and confidence in us.

FLORIDA CITRUS
CANNERS COOPERATIVE
(Signed) M. A. STEPHENSON
M. A. Stephenson
Production Manager

GENERAL COUNSEL'S EXHIBIT No. 5

FLORIDA CITRUS CANNERS COOPERATIVE

March 13, 1958

IMPORTANT ANNOUNCEMENT

To Our Employees —

We are pleased that, for several years now, over 80% of our employees have regularly participated in the Blue Cross — Blue Shield Plan presently available to you as an employee of this Company. Such participation shows that you are fully aware of and anxious to have the great protection and large benefits this plan provides for both you and your family.

The present plan is termed the *TYPE "J" PLAN*. You are now paying all the cost which is a monthly rate of $2.75 for individual and $7.10 for family coverage. Claims are limited to $7.00 per day for a hospital room and various other expense items are either not covered or are limited. *This is the best plan and lowest cost you can get unless the Company participates.*

In order to provide our employees broader coverage at considerably less cost to them, we are glad to announce that your Company will participate in this next year, beginning March 15, 1958. This decision by the Company makes it possible to provide for you the *Preferred Blue Cross — Blue Shield Plan*. The room allowance is raised to $9.00 per day and emergency room is included up to $20.00. Other

benefits such as X-rays, antibiotics and anaesthesia are added to the *Paid in Full* items. You get immediate benefit from this because, as of the above date, March 15th, every employee will automatically be under this improved plan.

For the much broader coverage under this *Preferred Plan*, the individual rate is the same as present ($2.75) and family coverage is only $1.00 more ($8.10). The Company will pay the full individual rate for each employee (or allow that amount as a credit for those employees who use the family plan) under the following schedule —

Employee working 1 month —
Company will pay 1 month.
Employee working 2 months —
Company will pay 2 months.
Employee working 3 months —
Company will pay 3 months.
Employee working 4 months —
Company will pay 5 months.
Employee working 5 months —
Company will pay 7 months.
Employee working 6 months —
Company will pay 8 months.

You will have the same opportunity as at present to keep yourself and/or family covered during the months not covered by this schedule by building up a credit for the contract cost of such coverage through payroll deductions while working. The deductions you have had made to date will be paid out for this Preferred Plan until work starts again. Periods of coverage begin on the 15th of each month

and as other employees are newly hired they will be covered under the Plan when the next following coverage period begins.

From this you will understand that *every employee* will be covered at *Company* cost for the time specified in the above schedule. The coverage will be much greater and much more valuable to you when emergencies arise than the former plan provided. Also, your expense will be much less, since you will pay only for a part of each year. It is not mandatory that you keep yourself covered in the period you do not work *but we certainly advise that you do so* and believe everyone will want to.

The separate leaflet will tell you more about this Preferred Plan and the benefits involved. As it states — *only through your employer are so many Paid in Full benefits available at such low cost.* Additional literature will be available at future times and we will be glad to explain any points not clear in more detail at your request. We are sure you will benefit greatly by this change in plans and because of the Company payments, both of which we are happy to provide for you.

FLORIDA CITRUS
CANNERS COOPERATIVE
(Signed) M. A. STEPHENSON
M. A. Stephenson
Production Manager

GENERAL COUNSEL'S EXHIBIT No. 6-A

FLORIDA CITRUS CANNERS COOPERATIVE

Lake Wales - Florida

Mar. 11, 1958

Mr. Arthur McKinney
432 H. St.
City

Dear Mr. McKinney:

You have been advised by letter dated Feb. 28, 1958 to vacate the property you are now occupying within 16 days.

As our records indicate you are paid up to this date, therefore we are returning your money order.

Yours truly,
(Signed) R. M. McCORMICK
R. M. McCormick
Rental Division

6-42,270,914
U. S. Postal Money Order
Dollars - Cents
15.00
Purchaser's Receipt
Fill In Other Side

539

DETACH AND HOLD

Purchaser assumes responsibility for filling in his name and address and name of payee in spaces provided on the order.

ISSUING OFFICE
Lake Wales, Florida
MAR 8 1958

This Receipt Must Be presented In Case of Loss

Sent to _____
Address _____

No Inquiry Accepted Prior To
30 Days From Date of Purchase

GENERAL COUNSEL'S EXHIBIT No. 21-A

TELEGRAM SENT
M. A. STEPHENSON DEC. 11th, 1957.

M. A. Stephenson
Production Manager
Fla. Citrus Canners Co-op
Lake Wales, Fla.

Re: Meeting between Company and Union negotiating Committees Previously requested.

The Union Negotiating committee is seriously concerned that the Company has not answered its request made last week for a meeting to hear the Companys' position on final contract and wage proposal submitted by the Union approximately two weeks ago. The Union is now renewing its request and proposes that a meeting between the Company and the Union committee take place tomorrow, Dec. 12th at 9 A.M. in the Walesbilt Hotel. Please confirm.

David F. Wingate, Bus. Rep.
Local 173

541

WESTERN UNION TELEGRAM

WU6 PD AUBURNDALE FLO DEC 11 1957 1000AME
M A STEVENSON PRODUCTION MANAGER
FLORIDA CITRUS CANNERS COOP LAKE WALES FLO

RE MEETING BETWEEN COMPANY AND UNION NEGOTIATING COMMITTEES PREVIOUSLY REQUESTED THE UNION NEGOTIATING COMMITTEE IS SERIOUSLY CONCERNED THAT THE COMPANY HAS NOT ANSWERED ITS REQUEST MADE LAST WEEK (phone) FOR A MEETING TO HEAR THE COMPANYS POSITION ON FINAL CONTRACT AND WAGE PROPOSAL SUBMITTED BY THE UNION APPROXIMATELY TWO WEEKS AGO. THE UNION IS NOW RENEWING ITS REQUEST AND PROPOSES THAT A MEETING BETWEEN THE COMPANY AND THE UNION COMMITTEE TAKE PLACE TOMORROW DECEMBER TWELVE AT 9 AM IN THE WALESBILT HOTEL. PLEASE CONFIRM

DAVD F WINGATE
BUSINESS REPRESENTATIVE LOCAL 173

1102A

Copy sent to
Bowden
12/11/57

542

TELEGRAM
Official Business — Government Rates

SENT TO M. A. STEPHENSON
DEC. 11th, 1957

M. A. Stephenson
Production Manager,
Florida Citrus Canners Co-op
Lake Wales, Fla.

RE: Meeting between Company and Union negotiating Committees Previously requested.

The Union Negotiating committee is seriously concerned that the Company has not answered its request made last week for a meeting to hear the Company's position on final contract and wage proposal submitted by the Union approximately two weeks ago. The Union is now renewing its request and proposes that a meeting between the Company and the Union committee take place tomorrow, Dec. 12th at 9 A.M. in the Walesbilt Hotel. Please confirm.

David F. Wingate, Bus. Rep.
Local 173

GENERAL COUNSEL'S EXHIBIT No. 21-B

WESTERN UNION TELEGRAM
322P

LDOO8 PD—LAKEWALES FLO DEC 11 1957 233PME—
DAVID F WINGATE BUSINESS REP LOCAL 173—
INTL BROTHERHOOD OF TEAMSTERS
ARIANA HOTEL
AUBURNDALE FLO—

BECAUSE OF PRIOR COMMITMENTS THE COMPANY REPRESENTATIVES WILL BE UNABLE TO MEET DECEMBER TWELFTH AS PROPOSED IN YOUR WIRE. THE COMPANY PROPOSES A MEETING WITH THE NEGOTIATING COMMITTEE DECEMBER EIGHTEENTH AT TEN AM IN THE WALESBILT HOTEL. PLEASE CONFIRM IF SATISFACTORY TO YOU—

STEPHENSON FLA
UND CITRUS CANNERS CORP—

GENERAL COUNSEL'S EXHIBIT No. 21-C

WESTERN UNION

To
M. A. Stephenson
Dec. 13, 1957
Street and No.
c/o Fla. Citrus Canners Coop
Lake Wales, Fla.

Care of or Apt. No.
Place

Re: Your Telegram

This will confirm Dec. 18th, 10 A.M. Walesbilt Hotel as next negotiating session between the company and the Union.

David F. Wingate, Bus. Rep.
Local 173

GENERAL COUNSEL'S EXHIBIT 23-A

FLORIDA CITRUS CANNERS COOPERATIVE

LAKE WALES, FLORIDA

January 4, 1958

International Brotherhood of Teamsters
P. O. Box 548
Auburndale, Florida

Gentlemen:

Since the citrus crop generally was subjected to seriously low and damaging freezing temperatures on December 12 and 13, 1957, this Company has been unable to arrive at any definite estimate of the damage to the fruit and the losses incurred. Neither can we determine or forecast with any accuracy the effect on our future operations of this disasterous blow nature has dealt. It is with regret that we must believe and so advise our people that, at the best, our operations will be seriously curtailed. However, it is our intention to provide every bit of work in all departments that conditions will allow for.

Product prices are and will be higher, but fruit returns will be generally much lower than such selling prices may seem to indicate, because of reduced volume and the much lower yields and much higher operating costs we are faced with.

Taking all this into consideration and with the desire that our employees be hurt as little as possible under these conditions, we have developed an increased wage schedule, a copy of which is enclosed. The increases included compare favorably with some eight or ten other rate schedule increases we understand have been granted in this 57/58 season to other citrus workers. In most instances these increases have been on minimum rates below our current $1.105 level.

It is our desire to make these increases retroactive to December 16, 1957. The first actual payment of wages on these increased rates will be paid for the week ending January 26, 1958. Unless we are advised by you in writing prior to January 11, 1958, that you do not agree to the increases herein set out, we shall assume this action is agreeable. In the event we put these raises into effect as stated above, the retroactive pay then due our employees will be figured and distributed as soon as practical after January 26, 1958.

Very truly yours,
FLORIDA CITRUS
CANNERS COOPERATIVE
(Signed) M. A. Stephenson
M. A. Stephenson
Production Manager

GENERAL COUNSEL'S EXHIBIT No. 24

Auburndale, Florida
January 10, 1958

M. A. Stephenson, Production Mgr.
Florida Citrus Canners Coop
Lake Wales, Florida

Dear Sir:

With reference to our Contract and Wage negotiations, please be advised that the membership of Local 173 took official action on January 9, 1958 on the Wage Proposal submitted by you on January 4th. Your proposal was unanimously rejected.

In a sincere effort to bring these negotiations to a peaceful conclusion the membership voted to make this last and final offer to the Company as follows: The final proposal on a contract which you already have in your possession, with the exception of the wage demands thereto, and the following wage schedule.

SECTIONIZERS —

Increase on 303 cans grapefruit sections 1-1/2c per clip of 12 cans, and all other sectionizing rates increased proportionately.

PEELERS —

Increased to $4.67 per M fruit peeled.

HOURLY RATES —

To be increased 8-1/2c per hour on all regular rates.

The following new classifications shall be added to Addendum "A":

Feed Testers
Car Checker
Peel Machine Operator

Mr. Stephenson, this is the last and final proposal to Florida Citrus Canners Coop in an effort to bring the contract to a conclusion. This proposal is made with the understanding that the effective date will be retroactive to December 4, 1957. Unless this is acceptable to Florida Citrus Canners Coop we have no alternative but to take action as we deem necessary to bring the issues to a conclusion.

I will appreciate a prompt answer from you as to whether or not this is acceptable.

Sincerely yours,

David F. Wingate, Bus. Rep.
Local 173

GENERAL COUNSEL'S EXHIBIT No. 25

To Our Employees —

The Teamsters Union has refused to agree to the Company putting into effect the wage increases proposed and posted which were intended to have been effective in the week ending January 26, 1958 together with back pay at the new rates being figured back to December 16, 1957 and distributed to each employee. This back pay alone estimated at over $10,000.00.

We quote from a letter dated January 10, 1958 and signed by David F. Wingate, Business Representative, Local 173 —

> "With reference to our Contract and Wage negotiations, please be advised that the membership of Local 173 took official action on January 9, 1958 on the Wage Proposal submitted by you on January 4th. Your proposal was unanimously rejected."

The Company regrets that under these present circumstances the increases will not be made effective on the dates we proposed. We hope that every employee took advantage of the right given them under the law to voice their opinion and vote on this matter which seemed to me vitally important to each one. We hope, too, that every employee understands that Union membership is not a requirement to work or to vote on such a question. Membership in a Union may only be required to vote on and engage in the internal affairs of a Union, as when electing officers, etc.

The Company is concerned about reports and rumors of threats and intimidation being practiced by some of our employees on their fellow workers. This is illegal by law and contrary to Company rules. We invite anyone so threatened to inform us of the event and we will follow valid reports with disciplinary action.

We are making every effort to obtain suitable fruit for all operations and pack as much as possible before the fruit becomes unusable or the remaining short supply runs out. Recently released official estimates by the U. S. Department of Agriculture of the fruit loss from freezing show that there are at least 22 million (22,000,000) boxes of oranges and 4 million (4,000,000) boxes of grapefruit less for industry to use. We agree with many others in the industry that the final loss figures will be much higher, especially so far as product processing is concerned.

If we can be of any assistance in providing information or answering questions concerning the general situation, please feel free to contact me directly or through your foreman.

FLORIDA CITRUS
CANNERS COOPERATIVE
(Signed) M. A. STEPHENSON
M. A. Stephenson
Production Manager

GENERAL COUNSEL'S EXHIBIT No. 26-A

WESTERN UNION

To

M. A. Stephenson,
Fla. Citrus Canners Coop.
Jan. 18, 1958

Street and No.

Lake Wales, Fla.
Phone 31591

Care of or Apt. No.

Place

Union stands ready to meet with Company at any time day or night in attempt to settle dispute.

David F. Wingate,
Bus. Rep. Teamsters Local 173
P. O. Box 548, Auburndale, Fla.
Phone Wo 7 1219
or Winter Haven Cy 41356

GENERAL COUNSEL'S EXHIBIT No. 26-B

WESTERN UNION TELEGRAM
1015 AME.

LDA002 PD—LAKE WALES FLO JAN 20 1958 948AME—
DAVID F WINGATE—
TEAMSTERS LOCAL 173 AUBURNDALE FLO—

RETEL COMPANY STANDS READY TO MEET WITH UNION AT ANY MUTUALLY CONVENIENT TIME—

STEPHENSON FLORIDA CITRUS
CANNERS COOP—

GENERAL COUNSEL'S EXHIBIT No. 26-C

WESTERN UNION

To

M. A. Stephenson,
Fla. Citrus Canner Corp
Jan. 20, 1958

Street and No.
Lake Wales, Fla.
Tel. 31591 or 20491
Care of or Apt. No.

Place

Union is willing and available to meet at any time as previously stated when company is prepared to meet. Please advise.

David F. Wingate,
Bus. Rep. Local 173
WO 7 1219

GENERAL COUNSEL'S EXHIBIT No. 26-D

WESTERN UNION TELEGRAM
230 PM..

LDAO19 PD—LAKE WALES FLO JAN 21 1958 154PME—
DAVID F WINGATE, BUSINESS REP—TEAMSTERS
UNION LOCAL 173 AUBURNDALE FLO—

UNABLE TO REACH YOU BY PHONE SO FAR
TODAY SUGGEST MEETING WEDNESDAY
JANUARY 29TH AT USUAL TIME AND PLACE
IF AGREEABLE PLEASE CONFIRM—

STEPHENSON
FLORIDA CITRUS CANNERS COOP—

GENERAL COUNSEL'S EXHIBIT No. 26-E

WESTERN UNION

To

M. A. Stephenson, Prod. Mgr
Jan. 22, 1958

Street and No.
Care of or Apt. No.
Fla. Citrus Canners Coop
Lake Wales, Fla.

Place

Re: Your telegram of Jan. 21, 1958

If Jan. 29, 1958 is earliest meeting date that Company deems suitable Union will meet on that date. Know usual place is Walesbilt Hotel. Please advise what is meant by usual time.

David F. Wingate, Bus. Rep.
Local 173

GENERAL COUNSEL'S EXHIBIT No. 26-F

WESTERN UNION TELEGRAM
121OP

LDO10 PD—LAKEWALES FLO JAN 23 1958 1157AME—
DAVID F WINGATE
BUSINESS REPR TEAMSTERS UNION
LOCAL 173 AUBURNDALE FLO—

FURTHER CHECKING, OUR COMMITTMENTS MAKE IT POSSIBLE TO MEET WITH UNION TUESDAY JANUARY 28TH INSTEAD OF JANUARY 29TH, SUGGEST 11 OCLOCK AM AT WALESBILT. PLEASE CONFIRM IF ACCEPTABLE –

STEPHENSON
FLORIDA CITRUS CANNERS COOP—

28 29 11

GENERAL COUNSEL'S EXHIBIT No. 26-G

WESTERN UNION

To

M. A. Stephenson, Prod, Mgr.
Jan. 23, 1958

Street and No.

Fla. Citrus Canners Co-op

Care of or Apt. No.

Lake Wales, Fla.

Place

Change of meeting date, time and place acceptable.

David F. Wingate,
Teamsters Local Union 173

GENERAL COUNSEL'S EXHIBIT No. 28

FLORIDA CITRUS CANNERS COOPERATIVE
Lake Wales - Florida

February 17, 1958

International Brotherhood
of Teamsters, Local No. 173
P. O. Box 548
Auburndale, Florida

Gentlemen:

A review of the file reflects that the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO, was certified on February 6, 1957 to represent a group of our employees in a unit described in N. L. R. B. Case No. 12-RC-11. As you know, we have been in negotiations since this time and have not agreed on a contract.

Just recently, our employees have presented us with petitions signed by more than 75% of the number in the full unit. These petitions are to the effect that they do not want to be represented by your union in any way. In view of these petitions and the fact that your certification has expired, it is our view that it would be illegal for us to continue to recognize your union as a bargaining representative for our employees. By the above and other reasons it is apparent that you do not represent a majority of our employees in an appropriate unit. We assume that you are aware of these facts and, further, you are now

violating Section 7 of the Act by your present conduct and activities.

It appears that your logical acceptance of the above facts would be in order, bringing the matter to a conclusion.

Very truly yours,

FLORIDA CITRUS
CANNERS COOPERATIVE
(Signed) M. A. STEPHENSON
M. A. Stephenson
Production Manager

GENERAL COUNSEL'S EXHIBIT No. 29-A

Auburndale, Florida

February 24, 1958

M. A. Stephenson, Production Manager
Florida Citrus Canners Co-op
Lake Wales, Florida

Dear Sir:

I am in receipt of your letter of February 17, 1958.

Request that Company meet with Union at earliest possible date and bargain in good faith to reach a settlement of our difficulties.

David F. Wingate, Bus. Rep.
Local 173, International
Brotherhood of Teamsters

GENERAL COUNSEL'S EXHIBIT No. 29-B

Received: Jun 3 1958

FLORIDA CITRUS CANNERS COOPERATIVE
Lake Wales - Florida

March 5, 1958

International Brotherhood
of Teamsters, Local 173
P. O. Box 548
Auburndale, Florida

Attention:
Mr. David F. Wingate
Business Representative

Gentlemen:

Reference is made to your letter dated February 24, 1958 and my letter to you dated February 17, 1958.

As pointed out in my letter to you, we have reasonable and adequate cause to question your claim of representation of our employees for reasons set out in our letter, which is self-explanatory.

If you have evidence, since our letter to you on February 17, 1958 that our employees have designated your union to represent them we will be glad to receive this information for evaluation and consideration.

Very truly yours,

(Signed) M. A. STEPHENSON
M. A. Stephenson
Production Manager

RESPONDENT'S EXHIBIT No. 3-A

People on strike that were replaced and discharged

Aoree, Oradee
Allen, Annie
Arnold, Curtis W.
Ayers, Robert J.
Bailey, W. L.
Ballard, Mose
Barfield, D. J.
Basinger, Edward
Batson, Agnes
Batson, J. B.
Bennett, W. G.
Bishop, Chalmas
Bohannon, W. A.
Bowen, Sallie
Bowen, Tommie
Bowman, W. T.
Boyett, J. S.
Boyett, Mildred
Boyne, Allen E.
Britt, Willie C.
Brooker, H. P.
Brown, C. R.
Burch, W. J.
Byrd, Johnson
Caldwell, Luria
Carnley, Frank
Carruth, R. J.
Carter, Melvin
Ciszek, John
Clark, Harry S.
Clayborne, B. G.
Clayborn, H. L.
Collins, Gressom
Collins, Troy
Davis, J. T.
Davidson, Clyde
Day, Lex
Dukes, Ralph
Dunaway, Harold
Duncan, Carl E.
Durrance, Daisy
Edenfield, Fulton
Evans, William
Ezell, Shelby
Farabee, Melton
Fillingim, Junior
Fuqua, T. J.
Galloway, E. E.
Garrett, O. J.
Gay, Bobby F.
Glisson, Billy J.
Godwin, Newvell
Goff, D. R.
Goff, L. J.
Granger, Thomas W.
Grantham, Walter

Gray, Leonard
Hale, Mary
Hall, Christine
Hall, J. H.
Hall, Theodore
Hammond, R. R.
Harbuck, Edward C.
Harper, Leroy
Harrison, B. L.
Harrison, Willie E.
Harvard, Leonard J.
Helm, Luther
Hewitt, J. W.
Holland, William T.
Holly, Fred
Holly, J. E.
Hoover, Sherman
Huggins, Bennie
Hunter, Allan
Hurst, John
Hutchingson, V. A.
Jackson, G. N.
Johnson, Clyde
Johnson, Robert D.
Johnson, Thomas
Johnson, Virgie C.
Johnson, Jr., Willie
Kilgo, Wesley
Knight, Albert H.
Knowles, Burley V.
Knowles, Johnie M.
Kyser, Shelly
Land, Merlin O.
Lasseter, Alice
Lassiter, L. T.
Leatherwood, Henry
Lesley, W. G.
Love, Donald E.
Lyles, Hugh L.
McKay, Alex
McKinney, Estelle
McLean, Carlie L.
McLeod, J. D.
Mathews, Lowell Thomas
Mayer, Lillie
Montgomery, J. W.
Moore, Fred S.
Moore, Mack
Mullins, J. B.
Newmons, Dora
Nobles, Billy
Norris, E. T.
Oliver, J. G.
Owen, James H.
Owen, William H.
Owens, William W.
Pabst, John W.
Partain, Earnest L.
Peavey, Ernest
Peavey, Jr., Luther
Pelton, Stanley L.
Pence, Verna Mae
Pence, W. P.
Peterson, Ernest Ray

Pickles, C. R.
Pckles, H. L.
Pitts, J. D.
Pope, Fred
Raines, Elmo C.
Rhoden, Hardie
Richardson, Jr., William H.
Riley, Tom
Robbins, C. W.
Roberts, Sr., Benton
Sanders, Arthur J.
Scroggins, Raymond L.
Scroggins, Roselle
Shepherd, Jr., Tommie
Shiver, M. W.
Shuman, C. R.
Sikes, Elie
Sikes, Zelma
Sims, James H.
Sims, Frank
Singletary, Doris
Slocumb, Jr., William E.
Spivey, Alene
Spivey, Joseph W.
Stanford, Leroy
Steedley, H. D.
Stern, Alice
Stern, T. M.
Stoudmire, Fred
Tadlock, J. F.
Tate, P. L.
Tew, Beamon
Tucker, Monroe
Turner, George
Underwood, J. S.
Waldrop, Leonard
Walker, John Henry
Ward, Algerine
Waters, Clifton
Watson, Vada
Weeks, Louise
Weld, Thurlow E.
Widner, Charlie
Wilkinson, Nellie
Williams, A. V.
Williams, S. E.
Wilson, Page
Wood, Louey
Wyrosdick, D. R.
Wyrosdick, John T.
Zorn, Alice
Zorn, William H.

RESPONDENT'S EXHIBIT No. 3-B

People on strike that were replaced and discharged

Austin, Evelyn
Ayers, Helen
Baker, Ada
Barnett, Beulah
Batson, Lunie Mae
Beasley, Ruby
Bees, Ruby Grey
Birge, Eloise
Blair, Melba
Boyette, Agnes
Boykin, Evelyn Louise
Braswell, Chester
Brimlow, Irby
Brimlow, Mable
Brooker, Mattie Mae
Brown, Carrie B.
Brown, Susie
Burgess, C. D.
Byrd, Euna Vae
Carnal, Mae
Cawby, Sadie
Clark, Addie P.
Clark, Lannie
Clayborn, Ada Lee
Clayborn, Dean
Conner, Hazel
Crawford, Eloise
Davis, Julia A.
Day, Carthell
Deal, Frances
Deal, Thelma
Dice, Agnes
Dice, Rena Mae
Drawdy, Mattie Lou
Driggers, Gerald
Dunaway, Margaret
Dunford, Anna Belle
Edmondson, Veleria
Fillingim, Katherine
Gilmore, Lutie Mae
Goff, Bessie
Goff, Cozette Margarette
Griner, Ada
Hagler, Cleo
Hall, Beatrice
Hammond, Ruby Lee
Hill, Tillman L.
Howze, Eveline
Huggins, Mary
Huggins, Raymond
Huchingson, Lois
Hutto, Essie
Jackson, Annie Lois
James, Hellon
Lewis, Dortha
Lewis, John C.

McKinney, Eula Lee
McKinnon, Laverne
Marshall, Pauline
Maxwell, Allie P.
Mears, Thomas R.
Meyer, Juanita
Mitchell, Elsie
Monday, Etta
Montgomery, Mary Nell
Moore, Lilly
Moreland, Ruth
Napier, Mary
Newmons, Curtis D.
O'Neal, Lommie
Payne, Elizabeth
Pickles, Waltrene
Price, Edna
Raines, Fannie
Register, Bertie M.
Revels, J. M.
Royal, Carl
Smith, Annie
Stephenson, Myrtle
Stinson, Nettie
Sturgis, Daniel
Sturgis, James Lee
Temples, L. G.
Terrell, Carrie Lee
Thompson, Mittie
Thompson, Wm. A.
Tucker, A. P.
Tucker, Yuless W.
Walker, Leona
Ward, Vera Mae
Waters, Marie
Waters, Nancy
Weaver, Loraine
Wheeler, Thelma
Wiggins, Betty
Williams, Melrose
Williams, Maude L.
Williams, Myrl
Wyrosdick, Janette
Yeatmen, Ellsworth M.
Young, Recy

RESPONDENT'S EXHIBIT No. 4

TEAMSTERS UNION REJECTS
MINUTE MAID CONTRACT OFFER IN POLK

LAKELAND, Dec. 11. (By Staff Writer) — The Teamsters Union has rejected a contract offer from the Minute Maid Corp. for workers at its Auburndale plant, W. W. Teague, area supervisor for the union reported tonight.

He said only three members of the union voted to accept the company offer. About 75 per cent of the plant's 200 workers voted on the proposed contract, he said.

Teague said the company had been notified by telegram of the union action and invited to meet with the union again "as soon as possible."

Minute Maid offered an eight and one-half cents an hour raise to all employes at the plant, with other provisions that were never made public.

Teague said Teamsters members found unacceptable company offers regarding seniority, vacations, holiday pay, arbitration and grievance procedures.

He said the wage offer was also unacceptable.

Teague also reported the union had made its "final proposal" to the Florida Citrus Canners Cooperative at Lake Wales.

"Does that mean a strike if they don't accept it?" he was asked.

"It sure does," said Teague. He said a meeting had been set with the company for Dec. 18.

Teague also reported negotiations with the Adams Packing Association at Auburndale, which he said were broken off several months ago, would begin again Friday "in a last attempt to reach a satisfactory agreement."

Negotiations are also continuing at the Bordo Products Co. plant in Winter Haven. There is no scheduled meeting with the Stokely-Bordo plant at Haines City, Teague said.

The union has won employe referendums sponsored by the labor relations board in each of the five plants.

"Our hope is that we can reach an agreement without any labor trouble," said Teague. "I don't know if we are going to be able to do it or not."

Labor relations in the citrus industry are not expected to get critical until January, when the holiday season is over and orange concentrating begins in heavy volume.

VOL

III

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Volume III

TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1961

No. 94

NATIONAL LABOR RELATIONS BOARD,
PETITIONER,

vs.

FLORIDA CITRUS CANNERS COOPERATIVE

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

PETITION FOR CERTIORARI FILED MAY 17, 1961
CERTIORARI GRANTED OCTOBER 9, 1961

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1951

No. 94

NATIONAL LABOR RELATIONS BOARD, PETITIONER,

vs.

FLORIDA CITRUS CANNERS COOPERATIVE

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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Appendix to Respondent's Brief Filed June 20, 1960

IN THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 18,186

NATIONAL LABOR RELATIONS BOARD, Petitioner,

versus

FLORIDA CITRUS CANNERS COOPERATIVE, Respondent

Petition for Enforcement of an Order of the National Labor Relations Board, Sitting at Washington, D. C.

[fol. 768] COLLOQUY

(4) Proceedings

(21) Trial Examiner: What is the General Counsel's theory or position with reference to what caused the strike?

Mrs. Fassig: It is our theory that the strike was caused by the respondent's refusal to accompany its wage proposal with any kind of a contract proposal whatever, in spite of the fact that they had reached agreement during their prior negotiating sessions on many, many of the substantial provisions of a collective bargaining agreement.

Trial Examiner: And its failure to do what you stated became in itself a refusal to bargain?

Mrs. Fassig: Yes sir.

Trial Examiner: And as I understand it your position is that the strike was caused only by a refusal to bargain.

Mrs. Fassig: Yes sir.

Trial Examiner: Not by the other unfair labor practices you charge in your complaint?

Mrs. Fassig: I am sorry, I didn't get the first of your sentence.

Trial Examiner: That it was not caused by any of the other unfair labor practices that you charge in the complaint?

Mrs. Fassig: No. I am not sure that I follow your question on that, if Your Honor please.

Trial Examiner: Well, I am trying to find out if your position is limited to claiming that the strike was caused by the refusal to bargain.

(22) Mrs. Fassig: Refusal to bargain as more fully specified; in other words, the fact that they had been doing bargaining, that there were issues on which they had previously met and had reached an agreement.

Trial Examiner: You don't claim that it was based on any 8(a)(1) or 8(a)(3)?

[fol. 769] Mrs. Fassig: I think some 8(a)(1) conduct did influence it.

Trial Examiner: As I read your complaint, you specifically limit your allegation in the complaint to refusal to bargain as a cause of the strike.

Mrs. Fassig: Well, as far as independent violation, some of the letters——

Trial Examiner: In fact, you say specifically in paragraph 10 that it was failure and refusal to bargain in good faith that caused the strike.

Mrs. Fassig: Yes, I want to make sure that some of the things alleged in 8(a)(5) are also a violation of 8(a)(1). I just don't want to get myself in a box there. Well, the strike was caused by refusal to bargain, as fully set forth in paragraph 8 of the complaint.

Trial Examiner: You mean what you allege there?

Mrs. Fassig: Yes.

(26) Trial Examiner: What I was developing was the fact that under your pleadings both the cause and the prolongation of the

(27) strike you charge were due only to the refusal to bargain, not to other unfair practices.

(28) Mr. Bowden: I can give you the facts as he told them to me, if you like at the time we discussed it. The facts, which would be the Board's theory were that if the tactics pursued by one party during the course of negotiations are selected for the purpose of avoiding agreement rather than for the purpose of reaching an agreement, that that does not satisfy the statute; and I asked him, "Is that the Board's position in this case, that there never was an intention to have an agreement?"

(29) He said, "Yes, that is correct."

(54) J. E. Holly, a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

[fol. 770] Direct examination.

(55) Q. And have you ever held any positions in unions?

A. I had been chief shop steward, and I had also served as representing the Union on arbitration boards.

Q. Mr. Holly, I will ask you whether or not you have ever had any conversations with Mr. Stephenson or with any of the other foremen regarding union matters in any way?

A. Yes ma'am.

A. This conversation took place in the hallway between the office of the assistant superintendent, I think his official —Mr. McCormick, and what is known as the stockroom, in that vicinity.

(56) A. Mr. Stephenson came down to his office that morning and went in, and I suppose worked a while. He came out, and we struck up a general conversation as to how bad the freeze had been, and how much warmer the day was than it had been two weeks before. After that, well, Mr. Stephenson asked me what I felt was coming of the Union, and I replied that I was pretty much disgusted, I didn't know for sure what was going to happen, that there were rumors of a strike. And he told me that a strike would be foolish, that the season would be short because of the freeze, and that it didn't matter if we struck, the plant would shut down pretty soon; if it didn't shut down the strike would possibly put a lot of good men would lose their jobs, and he told me that we should get together and kick the Teamsters organization out and we would all get along better, that there were certain benefits that were to be placed

(57) on the bulletin board, advertised in the next few weeks which might give us an incentive to do so. He asked me why I didn't get together with a group of my friends and come to his office and tell him that we were dis-satisfied with negotiations as they were, and thought that we should [fol. 771] have a raise before, and that we thought that the Union was causing us not to get our raise, and from that we could start de-certification procedure. He stated that we would need legal counsel in such a matter, but that

that could be arranged off-hand, off the record. He also told me that if we needed, thought we needed a Union, we could set up an independent union, and that they would assist us in doing so; that it was not necessary for us to be in a large International organization.

(61) A. Slick and I were walking along, and we got into a discussion about what we felt was going to happen, and Slick said that we should go ahead and accept the wages or the proposal as offered by the company, and that we would be better off if we went ahead and kicked that bunch of gangsters and racketeers out, decertified, I presume to me that meant.

(86) Evan Thomas Norris:

Direct examination:

(88) Q. All right, Now where were you at the time of the conversation?

A. In the back of the warehouse, where you go into the sectionizing department.

Q. Now was anybody else present during this conversation between you and Mr. Hall?

A. No ma'am, we were always by ourselves.

Q. Will you tell us what the conversation was?

A. Yes ma'am. To my best knowledge, he asked me would I go out on a strike. I told him I didn't know. And he asked me when was the strike to be, and I told him I didn't know. He asked me if we went out on a strike would I go, and I told him I didn't think so; and he said if we went out on a strike we would probably lose our jobs and he said he figured that it would best if we would not go out on a strike.

[fol. 772] Q. Do you recall anything else that was said by Mr. Hall at that time with reference to your not going out a strike?

A. He said that we would get better pay. He asked me if we wanted better pay, and I told him I sure would.

Q. Was anything else said in that connection? Just tell us as fully as you can what was said in that connection.

A. Each and every other day he would come up and ask me whatever I heard about the strike, who would go out on a strike and so forth.

Q. Had you been a member of the Union, or were you a (89) member of the Union at that time?
A. No ma'am.

Trial Examiner: Did you go out on strike?
The Witness: Yes, sir.

Q. Do you recall whether anything was said about any change in your rate of pay?
A. He said that we would get a raise.
Q. Under what condition, under what circumstances?
A. Well, he said that the company had offered the Union a better raise—I mean, had already slashed it on the board and he said that if we didn't have a union we would get better pay anyway.
Q. Was that all the conversation that you can recall that took place between you and Mr. Hall about this matter?
A. Yes ma'am, all by Mr. Byrd, the afternoon that we were loading out some cars, he came——
Q. When was this in relation to the strike?
A. I believe it was about the 15th.

Trial Examiner: Are you talking now about a conversation with Hall or one with Byrd?
The Witness: One with Mr. Byrd.

[fol. 773] (98) Charley Widner:

Direct examination:

(99) A. Well, I can't remember just who started the conversation, but we were talking about the freeze and about the season (100) what the prospect was for a good season; so I told him I believed we were going to have a good season in spite of the freeze, and he said, "Yes, I believe we will." I told him, I said, "The Union seems to be kind of slow about doing anything about it," and he told me, he said, "If you all vote the Union out, like they did at Stokely-Bordo, the company will give you a raise," and, he said, everything will be all right.

(146) Alice Lasseter:

Direct examination:

(152) So we went down to tell him, and we tried to tell him why we were going out, and I will admit I told him I was scared to death to, because you never knew what would happen in a strike, and I had my kids to think of and all, so I told Gray, "I just love my job, and I hate to give it up, and I want to come back when the strike is over."

(163) Leonard Gray:

Direct examination:

(165) The Witness: Jack Miller. He said if, asked me—he came up and asked me was I going out on strike, and I said, "Yes, I am going out on strike if they call one."

(192) J. F. Tadlock:

(196) Cross-examination:

(197) A. He said, "I am surprised at you. Why don't you go back in and go to work?

[fol. 774] (199) Mrs. J. F. Tadlock:

(202) Cross examination:

Q. What else did you talk about other than this?

A. Well, I couldn't go back and recall what all we did talk about; just one thing and then another, hitting back on what I had already said a lot of time about that.

Q. And so far as you can recall you can't recall anything of that conversation other than what you have testified here?

A. Well, I probably could if I stay here long enough.

Q. But you have been thinking about this conversation with him for quite a while; you have been questioned about this conversation that you have just testified about.

A. I have not, except alone by Mrs. Fassig.

Q. That is what I mean.

Q. So you have been thinking about that conversation since then haven't you?

A. I guess I have. I have thought about it, not a lot of times.

Q. Up to now you haven't been able to recall anything else, have you?

(207) A. No, I didn't I would like to say this, if I may: My brother has my husband's shift. When the old plant closed they brought him out there to put him on my husband's shift.

(208) Arthur J. Sanders:

Direct examination:

(210) Q. Of what morning?

A. Friday, the day of the strike. He called me and told me that he had been notified to tell me that if I wanted my damned job I had better come on back.

Q. Was there any other conversation between you and Mr. Scroggins regarding the same matter?

[fol. 775] A. Not at that time. Later on in the day he called me up and told me that if I wasn't there by six o'clock the next morning they were pulling my card.

Q. Do you have any special clothing that you use while on the job, that is furnished by the company, or anything like that?

(211) A. Just a cold room coat, that is all.

Q. Is that your personal property, or does it belong to the company?

A. No ma'am, it belongs to the company.

(232) Johnson Byrd:

Direct examination:

(237) Q. Can you recall for us what the conversation was, or tell us what the conversation was, the best you can recollect it now?

A. Well, to tell you the truth, I don't remember. They just came around and asked me to go back to work the next day, and I told them I couldn't I told them I had too many friends out, I just couldn't. I couldn't see it right then.

(273) C. R. Shuman:

Direct examination:

(280) Well, now, we generally hold the pickets mostly on the (281) left hand side of the intersection; so he comes out from the plant and pulls over on the right hand side and calls me over.

Q. Was he in an automobile, in his car?

A. I believe he was in a pick-up truck he had,—not exactly a pick-up, it was a panel truck he had at that time.

(337) Irby Brimlow:

Direct examination:

(339) A. A train came along and stopped across the road, [fol. 776] it was close to the railroad, and held the traffic up, and he was about the third or fourth car back, which put him about even to where we were standing; and he called me to him and he said, "Irby, you are doing the wrong thing." I says, "I don't think so." He says, "You are doing the wrong thing." He says, "If you all win it won't amount to anything." He says, "If anything they will go and shut down earlier, because they are (340) going to do away with the men peeling," the peelers you know, men who peel by hand, and he says, "They will have machines altogether after this season." And then he says, "How long have you worked for me?" I says, "Thirteen or fourteen seasons, first and last." He says, "Well, see there? I have always given you a job any time you asked me for it, haven't I?"

(356) J. B. Batson:

Direct examination:

(358) Q. Was Leo Brown present?

A. Yes ma'am, Leo Brown, he was present.

Q. What was the conversation? Did you overhear any conversation between Mr. Milner and any of the other employees?

A. He and Leonard Gray was talking when I walked up about it.

Q. What did you overhear?

A. I heard him ask Leonard what would they do if they walked out on a strike, would he go out with them? And he told him yes, he would.

(384) David F. Wingate:

Direct examination:

(420) Q. Without repeating what was said between your own union committee, what did you report back to Mr. Bowden?

[fol. 777] A. Well, we decided to accept his offer, with the provision that if the company was agreeable to the provisions of that proposal and that we would not be going back negotiating all the provisions in that article as they were, but rather that if the company was agreeable to the provisions of that contract, then we would accept that suggestion and prepare a new proposal based on that agreement.

A. Well, I asked Mr. Bowden, after we returned from recess, if that meant that the company was agreeable to the provisions of that proposal, and he said that the company was agreeable to those provisions in that proposal.

(422) A. I informed the company that we would present them with a contract, a new proposal based on this, at the next meeting; but, however, I also informed them then that I had been selected as a delegate to the convention in Miami, and it was starting in the next few days, and it would probably be in early October before I would be back.

(473) Q. (By Mrs. Fassig) How did this meeting between you and Mr. Stephenson end? What was the concluding discussion regarding it?

(474) A. Well, I told him it appeared to me that we just about had us a contract. I suggested he go and arrange for a meeting as immediately as possible, and I would get my committee together, and we would get together and I am sure would iron out these few differences that he had indicated. And he told me, well, he would have to get in touch with his atttorney and find out when he would be available, and it would probably take him two or three days.

(502) A. No, since I have reconsidered I don't believe that Mr. Morgan and Mr. Owens was at that December 18th meeting.

[fol. 778] (509) Cross-examination.

Q. Did you ever negotiate with the Respondent while you were with the Citrus Workers?

A. I did.

(512) Q. Are there any members of the present bargaining committee who also served in the same capacity in the old Citrus Workers union?

A. Yes, there are.

Q. How many are there?

A. Three, I believe.

Q. That would be who, then?

A. Mrs. Blair, Mr. McLean, and Mr. Burgess.

Trial Examiner: Who bargained for the company before?

The Witness: Mr. Bowden and Mr. Stephenson.

Q. Doesn't the present union, the Teamsters, the local of the Teamsters I will say, have almost the same officers as the old Citrus Workers had?

A. Generally speaking, yes sir.

(519) Q. (By Mr. Bowden) And in addition to the April 16 meeting you were not in the session of August 12 or August 27, were you?

A. Mr. Bowden, I won't deny that I might have went into those meetings, but I wasn't in there for the complete days as I recall, and I made no notes of any kind to refresh my memory with.

Q. I understood that, I just asked you were you at either one of those meetings, the meeting of August 27 or the meeting of August 12?

A. I may have been.

(520) Q. So any contract that was negotiated in Lake Wales with this Respondent company you would have had to admin ster, would you not, as Business Agent?

[fol. 779] A. I would if I was still Business Agent after the contract was consummated.

(521) Q. You didn't sit at the table and make notes on a yellow pad along with Mr. Roberts?

A. No sir, I did not.

(547) Q. For the record, what town did Mr. Roberts move to when he left the negotiations here?

A. Orlando, I believe.

Q. And approximately how far is Orlando from Lake Wales?

A. Some, about 50 miles.

Q. As a matter of fact, did you ever see Mr. Roberts down in Auburndale, where you live, at the Minute Maid plant there?

A. No sir, I never seen him down at the plant.

Q. Have you ever seen him in Auburndale since he left here?

A. Yes. I have seen him drive by the office, the Union office.

Q. Did you ever go to either Orlando or Auburndale to talk to Mr. Roberts about the negotiations which had been conducted in your absence, prior to the time that he had left the scene?

A. I do recall that I talked to Mr. Roberts and asked him where the notes were that he had on the previous meetings that (548) had been held.

Q. Did you ever make an attempt to take the company's proposal to Mr. Roberts and get him to go over with you the results of the bargaining during the time that he was in charge of the bargaining?

A No sir, I never did.

(552) Q. What happened at this meeting of September 19, then Mr. Wingate?

A. I requested Mr. Bowden, as the meeting opened, that I was somewhat handicapped because of the fact that I did not have the benefit of Mr. Roberts notes, which had [fol. 780] been made in the previous negotiations, and that I was willing to honor all the agreements that had been made in the past, but I had to be clarified as much as possible on what those agreements were; and we spent some time going through and checking on what was purported to be agreements that had been reached up until that time.

Q. Did you have any reason to question the accuracy of the agreements as they were given to you that day?

A. Of course, I conferred back with the meeting, to ask them did it meet with their recollection of what the agreements were, and it was pretty generally agreed that that was in essence correct.

(555) Q. Well, what did we say?

A. You said you were.

(558) Q. As a matter of fact, didn't you show up with an

original and one copy, and you gave us the copy and you kept the original?

(638) And I requested that I be able to clarify the union's position, since the attitude that the company committee had came in with didn't leave me with much doubt as to what Mr. Walker was probably going to say, that he had nothing to offer whatsoever, and I wanted to at least get in my statement, that we realized there had been a freeze, but that we still had the business of trying to get together on this contract, and that afer all the months and meetings that we had had, and negotiations, we felt like we ought to continue on and at least consider the proposal, even if we expected the monetary items.

(639) Did you, from the time of this alleged agreement with (640) Mr. Stephenson in early December, as far as our meeting on December 18th, say anything to me by way of letter or phone call, about any agreement that you had with Mr. Stephenson?

A. No, I did not.

[fol. 781] Q. And you didn't mention it at this meeting of December 18th?

A. No, I did not.

Q. Did you, after that meeting of December 18th through and including the meeting of January 28th, say anything to me, either verbally or by letter or in negotiations about this so-called agreements you had with Mr. Stephenson?

A. No, I did not.

(645) Q. And you didn't tell the committee at that time that they would have to accept this proposal of the Union's by 4 o'clock that afternoon or else?

A. No, I did not. I referred to the fact that if we had not reached an agreement of some kind, or made substantial progress, by 4 o'clock that afternoon, we would have to do whatever was necessary; and you asked me did I mean that we would strike, and I told you that was a possibility.

Q. Well, there was some reference, then, you now admit, that we had a deadline until 4 o'clock to get something going, isn't that right?

(646) A. That is right, I mentioned 4 o'clock.

Q. Well then, let me ask you this. In point of time when was it that your membership authorized your bargaining committee to strike?

A. At the November 14 meeting, I believe was when that action was taken.

(648) Q. (Question read, "How many members were present at the meeting at which they authorized it?")

A. I couldn't give you a specific number. I don't know. There were fifty or sixty people present.

(682) Q. Were they permitted to come into the meetings to discuss or take part in the deliberations on these contract provisions?

[fol. 782] A. They were invited to come in and join the Union and take part in them.

Q. That's right, they were required to join the Union before they were allowed to take part in the negotiations or vote on the conduct of the negotiations, were they not?

A. That is correct.

(706) Walter W. Teague:

Direct examination:

(727) A. We had less than 100 members in the organization.

(728) Cross-examination.

(736) Q. What time did you say that meeting started?

A. I would judge around 10:15 in the morning.

(742) Q. What was the purpose, then, of just coming back there?

A. Because the notes indicated that you had agreed to Section B-2 on October 10th, but on October 14th you raised a question again, to make it comply with Section A of the same article.

Q. All right, sir. And because of that, I believe it is your testimony that I requested Mr. Wingate then to prepare a new proposal, is that right?

A. No, you didn't.

Q. What did I request him to prepare?

A. You requested Mr. Wingate to prepare the articles that had been agreed to as of the 10th of October, and to put those pages within the proposal so that they would have more a complete contract to work from.

Q. When did he do that?

A. He did it between the October 14th and 22nd meetings.

Q. And when did he give them to us?

A. On October 22nd.

[fol. 783] (746) Q. Prior to the December 18th meeting hadn't you already given out some newspaper releases here to the fact that you w-re going to strike Florida Citrus Canners?

A. If any newspaper releases came out to that effect I have no knowledge of it, singling out Florida Citrus Canners, and if they appeared they are erroneous, because it was not decided that Florida Citrus Canners would be struck any time back there in that period.

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(862) Raymond E. Sherrer, a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

Direct examination.

(863) Q. Did you have a part in the circulation of a petition that was circulated among the employes of the Florida Citrus Canners Co-op?

A. Yes, sir.

Q. What do you know about the preparation of the petition, Mr. Sherrer?

A. Well, the day that the proposal was put on the board that the union had turned down our raise, the proposal that the company had made, there was myself and one more employe was talking about it, and I said "I think we had better circulate a petition and see how many of the employes feel the same as we do, see if they want the Teamsters to represent them or not." So we prepared the petition; the other man, he prepared it, and I circulated the petition, which we done it on our own. No one asked us to and no one asked us not to.

(867) Q. Where did you keep the petitions during the time that they were being circulated.

A. In the tool box back of my truck seat.

Q. About when did you start with these petitions, Mr. Sherrer?

[fol. 784] A. It was on a Wednesday after the 17th. I don't remember the date.

Q. Are you talking about of January?

A. Yes, sir, it was January.

Q. Now what did you do with them, after you got the petitions signed in that fashion?

A. Well, I went down to turn them over to Mr. Stephenson, and he was out of the office, and I asked Mr. Cannon if he would turn them over to him when he came in.

(868) Q. Have you ever been advised by the union as to the status of the negotiations that were being conducted with the company from time to time?

A. No, sir, not after the Teamsters came in.

Q. Did you know what was going on, as an employe out there?

A. No, sir, I didn't know what was going on between the company and the union.

Q. What was the first knowledge that you had that the company had made a wage offer to the Teamsters?

(869) A. When it was posted on the board.

Q. Have you ever been invited to or notified of meetings of the Teamsters in reference to a vote on any offer or proposal of the company?

A. No, sir.

Q. Did the union post any notices on the bulletin boards advising employes of union meetings which were considering wage and contract negotiations?

A. No, sir.

Q. Did you have any conversation with Mr. Stephenson here in regard to the petition?

A. On the 16th of February—or January; on the 16th of January, after I read that the proposal had been turned down, on the bulletin board—and on this board it was [fol. 785] posted that if there was any questions we might ask—so I approached Mr. Stephenson and——

Q. Where was this?

A. The sectionizing plant; and I asked him about the union, and he said he wasn't able to advise me, that I would have to see someone else if I got advice; what was on the board meant that it was concerning our work, and other opportunities, not with that; that I would have to get my information somewhere else. So I asked him in this meantime if there was anything against the company rules for

such a petition to be circulated, and he said he didn't know as there was or there wasn't.

(870) Q. Did you have any conversation with him from that time or after you got the petition signed, at any time during the period?

A. No sir, not until the last past week, this past week.

Cross-examination:

(872) Q. What is the usual practice regarding the circulation of petitions during working time?

A. Well, the average rule, we take up collections for people down there, they just go on; if they are on the clock they go ahead and take up their collections; they go to each employe, and just a minute they stop and get their donations and go on, and it was under the same principle we done this. I didn't ask no foreman or no boss could it be circulated; which was customary with all circulation petitions, just a routine of circulating petitions, taking up collections and (873) other things, that was done on the same principle.

(878) Claude Scroggins:

Direct examination:

Q. Do you recall if Arthur J. Sanders came to work that day?

(879) A. Yes, sir.

[fol. 786] Well, do you recall that he came to work or not?

A. He didn't clock in.

Q. Well, was he at the plant?

A. Yes, sir.

Q. Have you said anything to Sanders since he went on strike about returning to work?

A. No, sir.

(880) Robert Hall:

Direct examination:

Q. Did you ever talk to Tommy Norris before the strike, about the union?

A. He called me to where he was working, and he told

me that he didn't belong to the union, that he wasn't going to belong to the union, if they struck that he wasn't going to strike, and he didn't want any part of it.

(883) Norman Fowler:

Direct examination:

(884) Q. What key was that?

A. A production key that we have to turn the counters back on the production line.

Q. Does that require a key to do, Mr. Fowler?

A. Yes, you have to have a key to turn them back.

Q. Did you have any conversation with him at that time about the return of the key?

A. O, yes, I ask him for it.

Q. What did he say?

A. He said he would probably be back in a few days and use it.

Q. Meaning that he would be back to work?

A. I presume that is what he meant, yes.

[fol. 787] Q. He said he would be back in a few days, you said?

A. Right.

Q. Did he give you the key at that time?

A. No.

(888) H. W. Kelley:

Direct examination:

(889) Q. What was Irby Brumlow doing?

A. He was over there on the side of the road, on the picket line.

Q. Did you stop there then?

A. Yes, sir. The train was switched across the road there and had the traffic backed up, and when I drove up I had to stop right even with him on account of traffic.

Q. Were you on the opposite side of the road from him?

A. I was on the opposite side of the road. He was on the left and I was on the right.

Q. Did he come out into the street or did he stay on the curb?

A. No, sir, he just came up to the curb on the other side

of (890) the road. He never did come out on the road, but to the curb on the opposite side of the road from where I was sitting.

Q. There was a space for the opposite traffic to pass between?

A. Yes, sir, half of the road.

Q. Was the train moving at that time?

A. No, sir, it was across the street.

Q. I see. Had you cut off your motor?

A. No, sir.

Q. Your motor was running?

A. My motor was running.

[fol. 788] Do you know whether Irby Brumlow is hard of hearing or not?

A. Well, I didn't never ask him. He always acted that way to me. I don't remember ever asking him.

Q. What did you say to him that day, Mr. Kelley?

A. Well, I just drove up there and was caught, stopped there, see. I looked over there and saw him, and I just said, "Hi, boy, what are you doing over there?" being I had known him a long time and I figured he was a good friend of mine. He walked up there and said, "I'm on the picket line."

Q. Is that when he walked up to the curb?

A. Yes, when he walked up to the curb. I said, "Well, I sort of hate to see you do that; you made a mistake, under the conditions of everything, the freeze and everything."

Q. Did you say anything to him about coming back to work?

A. I just said, "You ought to have come back to work."

(891) Q. Were automatic peelers mentioned in that conversation?

A. Not one word.

Q. In fact, Mr. Kelley, did you need any peelers at that time?

A. Not any peelers at that time.

Cross-examination:

(893) Trial Examiner: Did you have any trouble hearing him?

The Witness: Well, yes, I didn't hear nothing, half of what he said, you know, more than just talking, just part

of it; and then the train, you know, switching, and then it started off, and when the traffic moved I had to move because there was traffic behind me and in front of me, so I just moved off.

[fol. 789] (896) Victor Backus:

Direct examination:

(897) Do you recall making a statement at that time or at any other time to Charlie Widner, that if the employes would do the same thing as Stokely-Bordo they would get a raise?

A. I don't think I did.

Q. Well, did you or didn't you?

A. I didn't.

Q. You what?

A. I did not.

Q. You did not?

A. I did not.

Q. Are you positive of that, Mr. Backus?

A. Yes, sir, I am.

Q. Do you recall any conversation of that type with Widner?

A. I don't recall it.

(899) Jack Milner:

Direct examination:

Q. Do you recall having a conversation with him, Leonard Gray, Dick—a fellow by the name of Dick, and Leo Brown shortly before the strike, outside the capping room department?

A. No, sir.

(900) Q. You don't recall any such conversation?

A. I don't recall it.

Q. Did you ask J. B. Batson what he would do in the event of a strike?

A. No, sir.

Q. Did J. B. Batson tell you words to the effect that he would go out if God gave him strength?

A. Never.

[fol. 790] Q. Did you mention anything to him about being hard-timed if he returned?

A. No.

Q. Do you know Leonard Gray?

A. Yes, sir.

Q. At the same time and place mentioned before did you ask Leonard Gray what he would do in the event of a strike?

A. No.

Q. Did he tell you at that time or at any time that he would walk out if God gave him strength?

A. No.

Q. Did you say anything to Leonard Gray about being hard-timed if he went out and came back after a strike?

A. No.

Q. Does either of these two men work for you, sir?

A. No, sir.

(903) Thomas Leo Brown:

Direct examination:

Q. Do you recall a conversation between Gray, Batson and Milner outside the capping machine department shortly before the strike?

A. No, sir.

Q. You don't recall any conversation between that group, of (904) which you were a member?

A. No, sir.

Q. Did you ever hear Jack Milner ask Leonard Gray what he would do in the event of a strike?

A. No, sir.

Q. Did you hear Leonard Gray say that in the event of a strike he would go out if God gave him strength?

A. No, sir.

[fol. 791] Q. Did you hear any remark by Milner that Gray would be hard-timed if he returned?

A. No, sir.

Q. Did you hear Milner ask Batson if he would go out on strike if one was called?

A. No, sir.

Q. Did you hear J. B. Batson remark that he would go out if God gave him strength?

A. No, sir.

Q. Did you hear Milner tell Batson that he would be hard-timed when he returned?

A. No, sir.

Q. Were you present at any time when any remarks like these were made by Milner to Batson or to Leonard Gray?

A. No, sir.

Mr. Bowden: You may inquire.

Mrs. Fassig: No questions.

(905) Robert L. Rexford:

Direct examination:

Q. Do you know J. F. Tadlock?

A. Yes.

Q. Do you know Mrs. J. F. Tadlock?

A. Yes.

Q. How long, sir?

A. Oh, I should say twelve, fifteen years, something like that.

Q. Have you had occasion to be at their home in the past?

A. Oh, plenty of times.

(906) Q. What were the occasions of those, Mr. Rexford?

A. Well, there were different occasions; I would go out to see them, and then I got milk from out there, and I have had hogs and cows out there.

[fol. 792] Q. Did Mr. Tadlock go out on strike?

A. Yes.

Q. Did you see him on the picket line?

A. Several times.

Q. Did you ever talk to him on the picket line?

A. One time, just to pass the picket line. He stopped me and talked with me.

Q. Tell us about that, sir.

A. Well, he explained to me why he didn't call me when the picket line was set up.

Q. What was the occasion for his explaining that to you?

A. Well, we had talked about it beforehand, and he said he wouldn't go out until he notified me.

Q. Why wouldn't he go out without notifying you?

A. Because he said it wasn't right to step out until he did notify me, and leave the boiler.

Q. It was because of the boiler he was watching, wasn't it?

A. Yes.

(907) Q. Did you, on a Sunday after the strike, go out to Tadlock's house?

A. Yes.

Q. Why did you do that?

A. Well, perhaps to get some buttermilk.

Q. Some buttermilk?

A. Yes.

Q. Had you gotten buttermilk out there before?

A. A lot of times.

Q. Did you talk to Mrs. Tadlock at that time?

A. Just a few minutes.

Q. And what was that conversation with her?

A. Well, I asked her about John, and she said he was at church; and apparently I had a cool reception, so I came on back to work—or back to town.

[fol. 793] Q. Did you say to her that John is a hothead, and he should work until 65 and retire?

A. No.

Q. Did you ask her to tell John to return to work.

A. No.

(908) Q. Do you know C. R. Shuman?

A. No, I don't.

Q. Do you know where the Highway 27 entrance is to the Citrusville plant?

A. Yes.

Q. Do you use this entrance to go home?

A. No.

Q. What entrance do you use to go and come through?

A. The one on North Avenue.

(909) Q. What kind of car do you drive, Mr. Rexford?

A. A Studebaker sedan.

Q. Do you have a pick-up truck?

A. No.

Trial Examiner: Did you ever drive one?

The Witness: Oh, I have drove almost any kind of car.

Q. I think the Trial Examiner means, along about the time of the strike were you driving a pick-up, or did you have a pick-up truck at that time?

A. No.

Q. How long has it been in the matter of time since you have had a pick-up truck or panel truck?

A. Well, it has been about two years since I had a panel, and that was a little Crosley.

Q. That was a Crosley?

A. Yes.

Q. You didn't have a pick-up or panel at the time of the strike, or since the time of the strike?

[fol. 794] A. No.

Q. Have you always had a Studebaker sedan all during that period of time?

A. Yes.

(911) C. B. Cannon:

Direct examination:

(913) Q. Have you ever told Mr. Holly to kick out the Teamsters?

A. No, sir.

Trial Examiner: Did you refer to them as a bunch of gangsters?

The Witness: No, sir.

Q. Have you ever told Holly to follow Mr. Stephenson and they would get their increase?

A. No, sir, I sure haven't.

Q. Have you told any employes, Mr. Cannon, that they would get a raise if they rejected the union?

A. I have not.

Q. Has any company official ever told you that they would never sign a contract with the union?

A. No, sir.

(914) Q. Do you recall having a conversation with Mrs. Lassiter on the morning of the strike?

A. No, sir.

Q. Did you have a conversation with her at a later time?

A. On Monday.

Q. Would that be January 20th?

A. Yes, sir.

Q. Who was present during this time, sir?

A. There was G. N. Jackson, and J. D. McLeod, and Gray Nolin.

[fol. 795] Q. Was anyone with you at that time?

A. No, sir.

Q. Were you alone, then, with the three of them, meaning McLeod, Lassiter and Jackson?

A. No, Gray was with us, Gray Nolin.

Q. Gray Nolin was with you?

A. Yes, sir.

Q. What was the subject matter of this conversation, Mr. Cannon?

(915) A. Well, we hadn't planned on starting that morning until 8:30, and they came back and they were undecided about going back to work. They said they had had people been driving by their house all night, and some of them had threatened them about if they went back to work they would do something to the children, and they were afraid to go back. That is their conversation that they had with me.

Q. Had they worked on Friday, the day of the strike, and possibly on Saturday?

A. Yes, they worked at the concentrate plant.

Q. Had all of them worked at the concentrate plant?

A. All those three had, yes.

Q. And this was on a Monday, then, following the strike on Saturday?

A. Yes, sir.

Q. Did they report then these threats and this activity to you that you have just testified about?

A. Yes, sir.

Q. What did you do then?

A. Well, I talked to Chief Petty.

Q. Who is he, sir?

A. He is the Chief of Police here in Lake Wales.

[fol. 796] (931) R. D. Chelette:

Direct examination:

(932) Q. Were they on the clock at the time they made that survey or passed that petition?

A. They were on the clock.

(935) Q. Do you recall how the October 31st session ended,

and what was said by Mr. Wingate at that time? I am talking about in reference to the next meeting.

A. Well, as I recall, when the meeting was adjourning the question came up about the next meeting, suggesting the next meeting, and Mr. Wingate said that he was waiting for word from the International, and then when he got word that he would notify as to when they could meet, the next day that they could meet, whether it was convenient.

(942) Linder E. McVay, Jr.:

Direct examination:

Q. Will you tell us what arrangements were made at the end of the October 21st meeting in regard to the next meeting between the company and the union?

A. My notes reveal that the "Union waiting on notice from International. Will advise as to next meeting."

(947) Marvin H. Walker:

Direct examination:

(951) Q. Did that newspaper article that is now referred to as Respondent's Exhibit 4 influence your decision to attend the December 18th meeting?

A. It was certainly one of the factors in that decision, yes.

Q. Did you hear Mr. Wingate and Mr. Teague testify that that meeting on December 18th began at 10 o'clock in the morning?

A. Yes.

Q. Will you state when the meeting was actually held? [fol. 797] A. The meeting started at 2 o'clock in the afternoon of December 18, 1957. The meeting had been originally scheduled for 10 o'clock in the morning, but because of weather conditions Mr. Bowden was delayed on his trip from Jacksonville to Lake Wales, and Mr. Stephenson phoned a union representative and agreement was reached that the hour of the meeting would (952) be changed to 1:30 p.m., at the Walesbilt Hotel in Lake Wales.

(953) He then stated th —or rather he asked Mr. Bowden if the company had anything new to offer, and Mr.

Bowden merely replied that we had no new proposals at this meeting. Mr. Wingate then stated that the members of the Teamsters union em- (954) ployed by us had met several weeks earlier, and by unanimous vote had authorized a strike if a contract could not be negotiated. He concluded by saying that if we, meaning the union and the company, are unable to reach an agreement by four o'clock this afternoon, he would have no alternative but to advise our employes to that effect. That was all he said at that time.

(955) About that time he asked me to go ahead with my statement, and I said that after listening to what Mr. Wingate had had to say I didn't know if I had anything to say. I said that Mr. Wingate said that our employes had met several weeks earlier and had voted to strike if a contract could not be negotiated. I said Mr. Wingate further said that if an agreement could not be reached by four o'clock this afternoon he would have no alternative but to advise our employes to that effect. I said, "The clear, unmistakable implication of your remarks, Mr. Wingate, is that if we don't sign a contract with you by tonight you will strike." I said, "That is a threat. I don't like threats, I don't respond under the pressure of threats, and I have nothing more to say;" and that is all I said.

[fol. 798] (962) Q. (By Mr. Bowden) Mr. Walker, were there any other serious freezes during this season?

A. The second serious freeze covering most of the citrus producing area was on the nights of January 9th and 10th, 1958. Then there was a third freeze the night of February 5th, when temperatures went to damaging levels.

Q. I believe you testified that during this time there was an embargo that was placed on citrus?

A. No, there was an embargo established on the shipment of fresh fruit—

Q. That is what I mean.

A. —by the Florida Citrus Commission, which became effective, I believe, December 16th, for a period of seven days. That embargo was authorized and limited by State law to those seven days. Then a Federal Marketing Agreement Committee, with the approval of the United States Secretary of Agriculture, continued the embargo on all fresh fruit shipments for another seven or ten days following the State embargo.

(964) Q. (By Mr. Bowden) Mr. Walker, to get back to my questioning in regard to the wage proposal which you made to the union on January 4, 1958, when was that wage offer determined by you to be made? I mean, when was it agreed upon to be made?

A. The decision was made the morning of January 4th.

(1019) M. A. Stephenson:

Direct examination:

Q. (By Mr. Bowden) What is your name, sir?

A. M. A. Stephenson.

Q. And what position do you hold with Florida Citrus Canners Cooperative?

A. Production Manager.

[fol. 799] Q. How long have you held this position?

A. Oh, since 1944, I believe.

Q. Were you the production manager at the time of the first union organization at the plant?

(1020) A. Yes.

Q. Do you recall what union that was?

A. Well, it was the Citrus Workers Union.

Q. And approximately when was this, Mr. Stephenson?

A. I believe in 1947.

Q. Did you then negotiate with the union on a contract?

A. Yes.

Q. Have you negotiated with that union since the original contract?

A. Yes.

Q. Have you any idea approximately how many times?

A. Well, just about annually, seven or eight or nine times probably.

Q. Were all those negotiations conducted without the union resorting to a strike?

A. Yes.

Q. (By Trial Examiner) Did you deal with Mr. Wingate in the course of any of those negotiations?

A. Yes, sir.

Q. How many times?

A. Well, to start with Mr. Frank E'Dalgo was the organizer, business agent, and I believe Mr. Wingate entered the

picture about, oh, 1952, 1953, along there. He has been in since that time.

Q. As a matter of fact he signed the contract that is in (1021) evidence here as General Counsel's Exhibit 17, did he not, the F.F. of L. contract?

A. I believe that is correct, yes, sir. He signed as an organizer.

[fol. 800] Q. (By Mr. Bowden) Were all your problems which arose during this period adjusted by negotiation between the parties?

A. By negotiation? Yes.

Q. I will ask you if you know Mr. Chet Burgess, Mrs. Melba Blair, Mr. C. L. McLean or Mr. Theodore Hall?

A. I know all of them.

Q. Are they members of the Teamsters negotiating committee?

A. Yes.

Q. Where any of those same people active as members of the negotiating committee of the old Citrus Workers Union?

A. At least two of them, Mr. Burgess and Mrs. Blair. I am not sure about Hall or McLean; I don't believe they were in.

(1037) Q. Do you recall what arrangements were made at the end of the October 31st meeting for the next meeting?

A. At the October 31st meeting?

Q. Yes.

A. When we broke up Mr. Wingate made the statement that he was not prepared to schedule another meeting at that time; that he had been in touch with the International and was waiting for some word from the International, was the reason given.

(1039) Q. Did you have a conference with Wingate between the meeting of October 31st and the next meeting held by the committees on December 18th?

A. A short one, yes.

Q. At whose request was that meeting set up?

A. Mr. Wingate's.

Q. And will you explain to us how that was accomplished?

A. Well, I would hardly call it a meeting.

Q. I mean in setting up the——

[fol. 801] - A. It was a rather casual discussion, as I recall.

(1040) Trial Examiner: How was it brought about? That is what he is getting at.

The Witness: Yes, sir. Sometime after, two or three days following the date of 11/23 when we had received the proposal, when Mr. Wingate called regarding it and wanted to know if we had received it, at that time he suggested that maybe we could get together, just he and I, and discuss the situation some; and I told him that I didn't see what that would accomplish particularly, we both had negotiating committees, and I wasn't very much in accord with discussing offhand the proposals. Well, he thought it might serve some purpose, we might be able to exchange ideas, get a little closer together and so on, and after some discussion along that line I believe I told him well, if he was over that way some time, why, stop in and we would see.

(1045) Q. (By Trial Examiner) How long did you spend doing that?

A. It was about an hour, I would say, sir.

(1050) Q. Do you recall why the date of the 12th was not acceptable to you?

A. Well, at the time our Directors' meeting was scheduled (1051) for the 12th, the regular monthly meeting.

(1054) I remember Mr. Wingate slowed down two or three times and Mr. Bowden started to speak, but Mr. Wingate continued on, and probably went on in that vein for some fifteen or twenty minutes, mentioning, too, that the committee had been authorized by the International and by the Local membership to—had been authorized or given strike sanction some time earlier, and that it was necessary to reach a conclusion on the matters promptly; we should act on the final proposal of theirs which we had, and if conclusions on that were not reached by four o'clock that afternoon [fol. 802] he had no recourse but to report that fact to the membership, and he couldn't predict the following results.

(1060) Q. (By Mr. Bowden) After the meeting of December 18, 1957, Mr. Stephenson, did the company make any proposal to the union on wages?

A. Yes.

Q. And when was this?

A. On January 4th.

Q. Did you receive a phone call from Wingate regarding this?

A. Yes.

Q. Do you recall what was said in this phone call?

A. Well, Mr. Wingate had received the proposal which we had forwarded, and called and said that he had received this wage proposal and he was somewhat surprised. "Well, why surprised? We hadn't made one before, and we wanted to get a full picture in for consideration." He says, "Well, what about the contract? Isn't there supposed to be a contract in? Did you forget to send one?" I told him no, we hadn't forgotten to send one; the contract was another phase of it, and he was familiar with all of our proposals. We had full proposals, as far as the contract was concerned, with them at the time.

(1061) Q. Do you recall when the strike was called, Mr. Stephenson?

A. Well, it was called the morning of January 17, 1958.

Q. Do you have any records that you could refer to, to tell us how many employes you had at that time?

A. I have some payroll listings here.

Q. Will you refer to those?

A. In that week?

Q. The week of the strike.

A. Yes, Well, that is our payroll week ending January [fol. 803] 19th, and we had 783 employes, total employes in the bargaining unit in that week. However, that includes 36 hired in that week. The prior week, ending January 12th, we had 752, and on January 5th we had 759.

Q. All right, sir. Do your records indicate how many employes went on strike?

A. I don't have the total replacement list; I don't have (1062) the exact total with me here.

Trial Examiner: Isn't that on your exhibit that has come in?

The Witness: That is right.

Mr. Bowden: They haven't been counted.

Q. It is that list, but approximately how many is it?

A. 278 I believe is the figure.

Q. As I understand it, the balance of your employes,

between that number and 783, did not participate in the strike?

A. That is right.

(1063) Q. On January 17th, at the time of the strike, was the sectionizing plant running at that time?

A. On the 17th it was not scheduled to operate.

Q. When did it next run?

A. On Monday following, which would be the 20th.

Q. Did you have some difficulty in ascertaining who was on strike and who was not on strike in reference to that operation?

A. Well, we had some difficulty in ascertaining who was and who was not, not only in that operation but in all of our oper- (1064) ations. There were some people that just didn't come in at all, of course. There were others that came in on the morning of the strike on the operations that were going, and decided then to leave. There were others that worked that Friday, and in some instances I believe [fol. 894] Saturday and Sunday, and then decided not to work any more but to go on strike by Monday. So there was a several days period there the first of the following week, the 20th, 21st and 22nd, along in there, before we had it really sort of settle down and knew the status of each employe.

(1066) A. Well, I was just in the plant on a visit there, and Mr. Sherrer—I was talking to somebody there. Mr. Sherrer walked up and stepped back a few feet and said, "I would like to see you if I can." So I said, "Sure." So I walked over there to him, and he said, "We noticed that notice is put up on the board there that the union has turned down the wage offer." I said, "Yes, that is right." He said, "Well, a bunch of us are not satisfied with that. We don't like that, and are wondering what we can do." I said, "I don't know of anything you can do." He said, "Well, we want to do something." I said, "You will have to get advice from somebody else." I suggested the Labor Board in Tampa, or some other disinterested party. I said, "Well, tell me this." About that time Mr. Lanier walked up also and joined the conversation, at least was listening, and Mr. Sherrer said, "Is there any company rule that would prohibit us from circulating any petitions?" and I replied that I didn't know of any company rule that would prohibit it, as long as it was handled in the normal way that such things

are and have been handled, our regular practice is, as long as it didn't interfere with the plant opera- (1067) tion.

Q. Is the company policy in this respect similar to the language in the old Citrus Workers contract identified as General Counsel's Exhibit 17, in Section (c) Article II, page 4?

(1069) Q. Were there any duplications or terminations on the petitions?

A. Yes, sir, we found 25.

[fol. 805] Q. Duplications?

A. Duplications, and 16 terminations.

Q. How many net valid signatures remained?

A. Reducing the 634 by the 16 and 25, left a net of 593.

Q. What percentage of your employment total did this represent, then?

A. The payroll, those in the bargaining unit, a listing of those in the bargaining unit at that point was 778, and this represented 76.2 per cent of that total.

Q. All right, sir. Mr. Stephenson, do you know Ivy Byrd?

A. Yes.

Q. Do you know what his job was on or about January 17, 1958?

A. Mr. Byrd was a checker or leadman in the warehouse at that time.

Q. How long has he been on this job?

A. Well, I don't know exactly, but I would say at least—a year and a half at least, possibly longer.

Q. Do you recall the representation petition filed by the Teamsters in this plant?

(1070) A. Yes.

Q. Do you recall the hearing on that case, 10-RC-3582, which was changed to 12-RC-11?

A. Yes.

Q. Did you attend the hearing in that case on September 18, 1956?

A. Yes.

Q. Was the job of plant checker discussed at that hearing?

A. As I remember it was, yes.

Q. Was the job of plant checker included in the appropriate unit in the Board's decision and direction of election dated November 23, 1956?

A. It was listed under the eligibility classification.

[fol. 806] Trial Examiner: Is it a published decision?

Mr. Bowden: I don't know whether it was or not, Your Honor.

Q. Was Ivy Byrd classified as a plant checker?

A. Yes.

Q. Did Ivy Byrd's name appear on the eligible list of voters in the election held on January 28th and 29th, 1957?

A. It did.

Q. Did Ivy Byrd vote in the election?

A. Well, I have no direct knowledge. I presume he did; he was eligible.

Q. Did Ivy Byrd continue in the same classification and wage (1071) rate up to January 28, 1958?

A. In the same classification. The wage rate I am not sure, but I believe so, yes. There may have been some rate change that I am not familiar with. I don't believe so, however.

(1072) Q. Have you always known Holly as a strong union adherent?

A. To the best of my knowledge, yes.

Q. Do you have any social contact with Holly?

A. No.

Q. Is your acquaintance with him limited to an employer-employe relationship?

A. Yes.

Q. Is your acquaintance with Holly any different from the hundreds of other employes at your plant?

A. No. Acquaintance?

(1073) Q. Well, did you tell him anything about a strike?

A. Well, I mentioned that I hoped we would not have a strike, particularly because of the freeze; it would be rather an increased problem both for the employes and the company.

[fol. 807] Q. Did you tell Holly for them to get together and kick the Teamsters out?

A. No.

Q. Did you call the Teamsters, to Holly, a bunch of gangsters (1074) and crooks?

A. No, I don't use those terms; I don't ever.

Q. Did you invite him to get a bunch of his friends and come to the office?

A. No.

Q. Did you tell him you would arrange for legal advice?
A. No.

Q. Was any mention made of a company union at that time?

A. In the particular conversation we had, I think Mr. Holly indicated something of dis-satisfaction and wondering——

Trial Examiner: Speak up.
Mr. Bowden: I can't understand you either.

A. He indicated some dis-satisfaction and an ignorance more or less of what was going on with our negotiations and so on, and whether or not there were going to be any increases or any settlements and so on, and he expressed some dis-satisfaction with the union set-up as I remember. I think he mentioned Mr. Wingate and Mr. McLean, and questioned their ability to decide what might be best for him, and referred to some place he had worked some time prior, I don't know where; as I gathered, he had worked some place where there was some kind of an employer-employe operating committee, or some kind of an arrangement of that nature, which he found very agreeable, evidently.

Q. Did I understand you to say that Holly asked you if you (1075) were going to make a wage proposal to the union?

A. He was wondering if there were any conclusions of that (?)

A. I told him that we had been considering for several [fol. 808] weeks a wage proposal. We hadn't arrived at any figure, the freeze had come along and sort of disrupted our thinking on that, too, but we were getting around to thinking of it again, and expected to get something shaped up there and make a proposal on wages to the union in the very near future.

(1078) Q. Has the company notified any of the tenants to vacate company housing?

A. Yes, some of the tenants.

Q. How many, do you know?

A. I believe nine is the outstanding number as of now.

Q. (By Mr. Bowden) Were any of the tenants who were

notified to vacate given such notice prior to the time they had been replaced or discharged?

A. No.

(1189) George Nevills Jackson:

(1190) Cross-examination:

Q. I mean, had you reported to them that someone had been driving up and down in front of your house?

A. There was some talk about it there in the sugar room, some of them in there asked me had anybody threatened me in any way, followed me home or anything like that, and I told them no, the only thing that happened was on Friday night that somebody came by my house and blew their horn about three times, that is all.

(1227) Trial Examiner: Assuming a finding of an economic case you would have no case on the 8(a) (3)s.

Mrs. Fassig: That is correct.

[fol. 809] RESPONDENT'S EXHIBIT No. 11

LAKE WALES NEWS—Jan. 16, 1957

Wage Hike at Canning Plant Stopped by Union

Officials of the Florida Citrus Canner Cooperative here and the Teamsters union will meet soon to discuss wages at the local cannery, but no definite date has been set so far, according to Marvin Walker, general manager of the cooperative.

The union Saturday cancelled payroll hikes ranging from 4½ to 10 cents an hour scheduled to go into effect the following day at the cannery, Walker said.

He told the News this week that the cannery had advised union officials the wage increase here would go into effect unless the union objected to the increase by Saturday.

The cannery received word just before the deadline that the union objects to the increase proposed by the cannery and wants instead an increase of 8½ cents across the board.

No further work (sic) has been received from the union since the wage increase offer was rejected, Walker said.

[fol. 810] RESPONDENT'S EXHIBIT No. 22

FLORIDA CITRUS CANNERS COOPERATIVE
Lake Wales, Florida

December 18, 1957

Notice to all Employees:

Today the company met with the Teamsters' Negotiating Committee to continue bargaining on a contract.

The Teamsters told the company that we would have to agree on a contract by tonight "or else".

The Teamsters would not give the company the same consideration they have other citrus plants, where from several weeks to a month were allowed the companies to assess the recent crop disaster and its affect on their operations.

We feel the Teamsters have taken a totally unreasonable attitude with this company—and that this attitude could

hurt the employees much more than it will the company, which has already taken a hard blow.

While our operations will be severely restricted by crop losses and government regulations, it is our desire to operate our plants as best we can with the fruit remaining and to provide work for as many of our employees as possible in this crisis.

We sincerely hope that our employees will cooperate with us so that we may all do our part, each to the other.

Sincerely yours, Florida Citrus Canners Cooperative, Marvin H. Walker, General Manager.

[fol. 811] IR-711
Lakeland, Fla.

BEFORE THE NATIONAL LABOR RELATIONS BOARD, DIVISION OF TRIAL EXAMINERS, WASHINGTON, D. C.

Case No. 12-CA-339

ADAMS PACKING ASSOCIATION, INC. and CITRUS CANNERY, FOOD PROCESSING and ALLIED WORKERS, DRIVERS, WAREHOUSEMEN & HELPERS, LOCAL 444, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA.

Mrs. Margaret L. Fassig, for the General Counsel.
William A. McRae, Jr., Esq., and *Wofford N. Stidham, Esq.*, for the Respondent.
Frank E. Hamilton, Jr., Esq., and *Mr. W. W. Teague*, for the Charging Union.
Before: *Henry S. Salom*, Trial Examiner.

INTERMEDIATE REPORT

Statement of the Case

Upon a charge filed on February 16, 1959, by the Citrus, Cannery, Food Processing and Allied Workers, Drivers, Warehousemen & Helpers, Local 444, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, herein called the Union, against Adams Packing Association, Inc., herein called interchangeably the Company, Respondent, and Adams, the General Counsel of

the Board issued a complaint on February 17, 1959.[1] The [fol. 812] complaint as amended on March 5, 1959, alleged the commission of unfair labor practices by the Respondent Company in violation of Section 8 (a) (5) and (1) of the National Labor Relations Act, 61 Stat. 136, as amended, herein called the Act, in that the Respondent Company refused to bargain collectively with the Union, as the exclusive representative of all employees in an appropriate unit, although the Board on February 18, 1957, had certified the Union as the exclusive representative of all employees in the unit for the purpose of collective bargaining. Specifically, the complaint alleges that the Respondent, beginning on September 19, 1957, refused to bargain in good faith by engaging in stalling tactics; withdrawing bargaining concessions previously made; failing to incorporate into its contract proposal submitted on November 14, 1957, all prior tentative agreements which had been reached at prior bargaining meetings and failing to make any new offer or to resume negotiations with respect to wages, hours, holidays and paid vacations following Respondent's withdrawal on December 14, 1957, of its December 9 proposal with reference to those matters. In addition, the complaint alleges that Respondent's course of conduct generally assisted a movement for rejection of the Union by its employees as well as its unilateral grant of wage increases on March 14, 1958, retroactive to December 18, 1957; and that by various letters and telephone calls between March 14, 1958, to February 16, 1959, the Respondent Company has refused to bargain with the Union.[2]

The Respondent in its answer to the complaint denied all

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[1] The Regional Director originally dismissed the charge on June 2, 1958. An appeal was taken from the dismissal by the charging party to the General Counsel who sustained the appeal on January 16, 1959, and ordered the Regional Director to process the charge.

[2] The General Counsel withdrew allegations from the amended complaint (paragraphs 11 (h) and 11 (i)) that Respondent refused to answer the Union's proffer of fresh and further evidence on February 18, 1959, that the Union was in fact currently the majority representative of Respondent's employees.

material allegations imputing to it the commission of unfair labor practices except that it admitted the jurisdictional allegations of the complaint and that the Charging Union [fol. 813] is a labor organization within the meaning of Section 2, subsection (5) of the Act. The Company Respondent in its answer admits the Board certified on February 18, 1957, that the Union had been designated by a majority of the employees as their representative but pleads affirmatively that 57 percent of the employees in the bargaining unit subsequently signed a petition filed with Respondent on March 10, 1958, in which they disavowed the Union as their representative. Respondent also admits that it granted a wage increase to its employees in March 1958 but that the Union did not represent a majority of the employees at that time. Furthermore, pleads the Respondent, the actions of the Union prevented the Respondent's good faith efforts to reach agreement with the Union.

Pursuant to notice, a hearing was held at Lakeland, Florida, from March 17 to March 26, 1959, inclusive, before Henry S. Sahm, the undersigned Trial Examiner. All parties were represented by counsel, and were afforded full opportunity to participate in the hearing and to *introduce relevant evidence bearing on the issues. The parties failed to avail themselves of the opportunity accorded them to argue orally at the end of the hearing, and only the Respondent filed a brief thereafter. As a result of the General Counsel's failure to submit a brief, the Trial Examiner does not have the benefit of a formalized statement based upon the transcribed record giving her analysis of the facts, applicable law, and the specific reasons for the contentions made.*[3]

[3] It is strange, indeed, for one to investigate the case, interview witnesses, prepare for hearing, present the case, argue it and fight for it before and during the hearing but when the issue reaches climax on the battlefield of decision, and after the evidence is in and the hearing is at an end, to fold one's tent of advocacy by neglecting to file a brief and silently steal away leaving the Trial Examiner to surmise what are the specific contentions. This is a calculated risk, particularly where it is not made clear during the course of the hearing upon what legal theory the case is being tried. Only after the turbulence of the hearing room has subsided,

[fol. 814] *Respondent's oral motion to dismiss the complaint which was made at the conclusion of the hearing, and on which ruling was reserved is hereby granted for the reasons hereinafter stated.*

Upon the entire record in the case, upon consideration of the arguments and motions of counsel, including the Respondent's brief and citations of cases alleged to be dispositive of the issues in this proceeding, and from observation of the demeanor of the witnesses, the Trial Examiner makes the following:

Finding of Fact

I. The business of the Respondent [4]

It is conceded that the Respondent Company, a Florida corporation, is engaged in growing, processing, concentrating and canning citrus fruits and juices. In the conduct of its business, it ships annually processed products valued at an amount in excess of $50,000 outside the State of

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and the spoken word has been transferred to the written transcript, can the testimony elicited during the heat of hearing be accurately recalled, dispassionately reviewed and intelligently argued. Such steps are conducive to establishing a well-laid foundation which is the necessary keystone upon which the structure of argument can be erected and the pinnacle of advocacy sturdily built.

[4] Recker, Vice-President of the Company, testified as follows:

> The Company is a corporation. The majority of the stock is owned by individuals who grow citrus fruits and who deliver that fruit to the Company. A minority of the stock is owned by employees of the Company. The fruit which is delivered by the stockholders is received without any guaranty of value. After that fruit has been marketed and all costs have been determined, each grower is paid on a unit basis the net value that his fruit returned to the Company. The Company has in the past purchased fruit for cash from people who are not stockholders, and if that purchased fruit reflected a profit, a corporate income tax was recorded and paid.

Florida. It is found, therefore, that the Respondent is engaged in commerce within the meaning of Section 2 (6) and (7) of the Act, and it is subject to the jurisdiction of the Board.

[fol. 815] II. The labor organization involved

It is admitted and found that the Charging Union is a labor organization within the meaning of Section 2 (5) of the Act, and that it admits to membership employees of Respondent.

The Issues

After the Union was certified [5] negotiations began with the Respondent Company for the eventual purpose of negotiating and signing a collective bargaining agreement. Various conferences were held by the parties but no agreement was reached. On March 10, 1958, certain employee petitions disavowing the Union were delivered to Respondent and on March 14, 1958, Respondent granted a wage increase to its employees. The salient questions to be decided in this case are:

(1) Whether the Company has refused to bargain with the Union within the meaning of Section 8 (a) (5).[6] In

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[5] There is no issue either as to the appropriateness of the unit nor as to the Union's representative status prior to the end of the certification year on February 18, 1958.

[6] The relevant provisions of the National Labor Relations Act, as amended (61 Stat. 136, 65 Stat. 601, 72 Stat. 945, 29 U.S.C., Secs. 151, *et seq.*), are as follows:

Rights of Employees

Sec. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agree-

[fol. 816] resolving this issue the legal incidence of the employees' disavowal petitions must be determined and whether the Company assisted and sponsored their circulation, and whether it was an unfair labor practice for the Respondent to put into effect on March 14, 1958, the same wage increase which the Company previously offered to the Union on December 9, 1957.

III. The alleged unfair labor practices

1. Designation of the Union

Respondent Company was a party to a collective bargaining agreement with Citrus Workers' Local No. 24216, affiliated with the American Federation of Labor, effective from December 12, 1950, to November 1, 1956. The Charging Union filed a representation petition on August 3, 1956,[7] by which it sought collective bargaining rights for the unit of production and maintenance employees of the Company which had theretofore been represented by Citrus Workers'

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ment requiring membership in a labor organization as authorized in Section 8 (a) (3).

UNFAIR LABOR PRACTICES

SEC. 8 (a) It shall be an unfair labor practice for an employer—

(5) to refuse to bargain collectively with the representatives of his employees, subject to the provisions of section 9 (a).

SEC. 9 (a) Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other condition of employment • • •

[7] The case was originally docketed under the number 10-RC-3561 but subsequently, upon establishment of a new region at Tampa, Florida, the General Counsel issued an order by which the case was transferred from the Tenth to the Twelfth Region under the new Case Number 12-RC-10.

Local Union 24216. Following a formal hearing and the issuance of a Decision and Direction of Election on November 26, 1956, a Board election was held in which the participating labor organizations were the Charging Union and Citrus Workers Local 24216, the latter union in the meantime having become affiliated with the International Union of United Brewery, Flour, Cereal, Soft Drink and Distillery Workers of America, AFL-CIO. As a result of this election, which was held on February 8, 1957, the Charging [fol. 817] Union was certified by the Board on February 18, 1957, as the bargaining representative of the Company's employees in a bargaining unit which was described as "all production and maintenance employees including warehousemen, sectionizing, feed mill and molasses unit employees, peelers, packing house employees, garage and filling station employees, but excluding truckdrivers, office clerical employees, chemists, managerial employees, agricultural employees, night watchmen, and all supervisors as defined in the Act, employed at Respondent's plant at Auburndale, Florida."

Following the Board's certification on February 18, 1957, of Local Union No. 444, the Company on March 29, 1957, in Case No. 12-RC-10 served by mail a petition for Annulment of Certification Proceedings, the same being received by the Board on April 1, 1957, whereby the compliance status of Local Union No. 444 under Section 9 (h) of the Act was attacked and the Company requested the Board to annul and hold void all proceedings based upon the growing out of the petition for certification filed by that organization, and thus sought to have the Board cancel and rescind the certification of representatives which had been signed on February 18, 1957, on the ground that the Business Agent of the said Local Union, one David Wingate, was an officer of said Union and had failed to comply with Section 9 (h) of the Act by failing to file his non-Communist affidavit.

Following the filing of briefs both in support of, and in opposition to, the Petition for Annulment of Certification Proceedings referred to in the above paragraph, the Board on June 20, 1957, issued its Order Denying the Petition for Annulment of Certification Proceedings.

Thereafter, on July 5, 1957, the Company served by mail a Petition for Administrative Investigation and Determination of Compliance with Section 9 (h) of the National Labor

Relations Act, the same being received by the Board on July 8, 1957, alleging that David Wingate, business representa- [fol. 818] tive of the Teamsters Union, had not filed a non-Communist affidavit as required by Section 9 (h) of the Act, although the said David Wingate was an officer of the Teamsters Union within the scope and intendment of Section 9 (h) of the Act and Section 102.13 (b) (3) of the Board's Rules and Regulations.

On September 26, 1957, the Board issued its Administrative Determination of Compliance Status (118 NLRB 1449) wherein the Board, contrary to the contentions of the Respondent Company, found that Wingate was not an officer of the Union and that Local Union No. 444 at all material times had been in compliance with Section 9 (h) of the Act.

2. Chronology prior to August 20, 1957 [8]

On May 22, 1957, approximately 2 months after its certification, the Union for the first time, requested a meeting with the Respondent Company for the purpose of negotiating a collective bargaining agreement.[9] This request was answered by the Company on May 27, by letter which stated that the Union's request to negotiate was "premature" because of the Company's petition for decertification of Local 444 which was then pending before the board. When the Company's petition for decertification was denied by the Board on June 20, the Union wrote the Company on June 24, requesting that a definite date be set in order to begin negotiations. Pursuant to this request, the Company on June 28, suggested July 11 for the meeting to which the Union agreed.

The Company and Union representatives met on July 11,

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[8] This date is used at it is beyond the statutory period of 6 months provided for in Section 10 (b) of the Act which states that conduct occurring more than 6 months prior to the filing of the charge cannot be relied upon as evidence of unfair labor practices.

[9] Although the Union's Business Representative wrote a letter to the Company's Attorney on March 12, 1957, this was not a request to negotiate but a suggestion that the Company and Union meet to establish a method of processing grievances.

1957, for approximately 30 minutes. The chief negotiator for the Union was W. W. Teague, an organizer for the [fol. 819] Southern Conference of Teamsters.[10] He presented a written draft of the Union's contract proposals to the Company. W. W. McRae, Attorney and Chief Negotiator for the Company, stated that since the Company denied the validity of the Union certification and that it was taking steps before the Board to annul this certification by a petition dated July 5, that it would not commence negotiations until this petition was acted upon by the Board.[11] Moreover, stated McRae, Herschel N. Sorrells[12] was being brought in from the outside to replace the Company's General Manager, J. J. Morrow, who was then critically ill and since he would not assume his new duties until September 1, the Company felt that in order to adequately protect its interests in the bargaining negotiations, it would be necessary that a reasonable time be afforded Sorrells, after he took over the management of the Company on September 1, in which to familiarize himself with the Company's operations.

3. Events subsequent to August 20, 1957

Although the Board's decision on the Company's petition did not issue until September 26, 1957, the Company, nevertheless, met with the Union's negotiators on September 17, a little over 2 weeks after Sorrells assumed his managerial duties.

At the September 17 meeting which lasted from 9:30 a.m. until 4:30 p.m., with an hour and a half for lunch, the Company submitted its counterproposal to the union representatives, the provisions of which were discussed generally and paragraph by paragraph, with agreement being reached on paragraphs 1, 2 and 3.

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[10] Teague was chief negotiator for the Citrus Local Unions which comprised the Joint Council consisting of three Florida locals located at Winter Haven, Lake Wales and Auburndale.

[11] The Company's petition was denied by the Board on September 26, 1957.

[12] At the time of the hearing, Sorrell's title was Executive Vice President and General Manager.

Third and fourth meetings were held on October 8 and 17. At the October 17 meeting, further agreement was reached [fol. 820] on additional provisions. The next meetings of the Conferees were held on October 24 and 29 at which times the grievance procedures and paragraphs 6, 7 and 8 were agreed upon by the Company and Union Representatives.

At the conclusion of the November 7 meeting, the negotiators, to quote Teague, chief spokesman for the Union, "had reached agreement on practically every major article in the contract, with the exception of those which make reference to money, such as vacations, holidays * * *." [13] It was then agreed that the Company's attorney, McRae, would have those provisions which were agreed to typed in contract form and prepared for submission at the next meeting.

The next meeting on November 14, commenced by a discussion of the contract proposals that McRae had had typed and which purported to embody the provisions agreed to at the previous negotiating meeting. Teague, the Union's chief negotiator, charged that the contract proposal typed by the Company did not correctly reflect what had been agreed to at the previous bargaining sessions. McRae took exception to that statement, an argument ensued and the Union Negotiators, to quote Teague, "walked out" of the meeting at 11:30 a.m. As the Union Negotiators prepared to walk out of the meeting, Sorrells, Respondent Company's manager, according to Teague's testimony, asked him to reconsider his action stating that the Conferees "had made

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[13] The breakdown of the Company's departments had not been agreed upon but to quote Teague again, "we had reached no absolute agreement on the departments, but we had reached an understanding as to each other's position on that, and it didn't appear at that point that we were very far apart with respect to the departments." Teague, also acknowledged on cross-examination that Sorrells, Respondent's general manager, told him that the department matter "wasn't going to be any problem, that they were essentially interested in what it was going to cost the Company in the way of money, that the remaining items of the contract was no problem as far as they were concerned."

tremendous progress and I (Sorrells) feel like in another [fol. 821] meeting or two we can make enough progress to have a contract agreed to." The negotiators for the Union refused, however, and left the meeting.[14]

The following morning, November 15, Teague telephoned Sorrells and suggested that they get together that morning "over a cup of coffee." Sorrells agreed and they met for an hour and a half. They talked about wage matters and when Sorrells asked Teague what the Union was asking, Teague answered, "we have got to have at least 25 cents an hour increase," to which Sorrells replied that they "could not stand that kind of an increase from the competitive standpoint" explaining that it was impossible for them to pay their employees 25 cents an hour more than their competitors and still remain in business. Teague then suggested that they meet on November 18, but without McRae, the Company's attorney, because Teague stated "experience has taught us that (lawyers) only clutter up the negotiations rather than expedite them."

On November 18, Lee Recker, who was then Respondent's Vice President and Sorrells met for about 3 hours with Teague, Morgan, who is the International representative of the Southern Conference of Teamsters, and Thomas Owens, National Director of the Cannery and Produce Division of the Teamsters International Union.[15] At the out-

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[14] A letter from the Respondent to the Union dated December 9, 1957, states in the first paragraph: "At noon (of November 14, 1957) the representatives of the Teamsters broke off negotiations and stated that the Teamsters would submit to Adams at an early date their final proposal. Up to the present time no such proposal has been received by us from the Teamsters. The purpose of this letter is again to inform you that Adams continues to be ready and willing to meet further with representatives of the Teamsters and actively and in good faith to go forward with negotiations directed toward agreement upon a contract."

[15] The testimony concerning the timing and what transpired at the November 18 and December 4 meetings is not clear as to specific details and in some instances ambiguous as to what occurred at which of these two meet-

[fol. 822] set of the meeting, Sorrells stated that if the negotiators could agree on the wage items, "that the rest of the contract would be no problem whatsoever." Sorrells then furnished the Union Negotiators with the wage rates being paid by the Respondent's competitors, which he had obtained since the last meeting, and asked them what the Union was seeking in the way of wages for Respondent's employees. Morgan answered that the Union wanted an increase of 15 cents an hour for a one-year contract and 12½ cents for two years. Sorrells stated that the Company "had in mind" 7½ cents but Morgan told him "that just won't go." Thereupon, Sorrells requested additional time to consult with the company officials and assured the union representatives that he would contact them later.[16]

Teague left for Dallas, Texas, on November 27 to spend Thanksgiving at home. On his return to Florida on December 1, he found a letter from Sorrells dated November 22nd awaiting him which stated:

> We believe that with some further study on our part we can give you a better understanding of our position. With these additional facts, there would be a better chance of our discussions of the wage situations being constructive. I am sure that you, Mr. Owens, and Mr. Morgan know that I sincerely want want to go forward actively with the negotiations, and if possible to agree on a contract with the least practical delay.

Teague telephoned Sorrells on December 2. Sorrells told him he had tried to contact him on November 28 and the hotel at which Teague was staying had advised him that Teague was out of town and would not return until December 1. It was then agreed by them that they would meet on December 4.

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ings, so that the findings of facts made herein result from the Trial Examiner's attempt to reconcile the evidence in order to determine the chronological sequence.

[16] The above is based on Teague's testimony.

The December 4 conference,[17] was held at 8 p.m. in the [fol. 823] Winter Haven Hotel and was attended by Sorrells and Recker for the Company and Teague, Owens and Morgan for the Union. At this meeting, tentative wage scales were agreed on for the peelers, sectionizers, and in lesser degree for the packers and the area of difference between the Union's demand and the Company's offer as to the other classifications of employees in Respondent's plant was much less at the conclusion of this meeting.[18] The Company representatives then stated they would consult with their board of directors and shortly present the Union a definite wage proposal. The conference then adjourned after meeting for about 3 hours.

On December 9, the Company presented a definite written proposal with respect to wages, hours, holidays and paid vacations. The letter which contains this proposal concludes with this statement: "You will observe that the increased wages proposed by us would put Adams' employees on a wage basis that would be as favorable as any, and more favorable than most employees in the citrus industry in Florida."

That same evening (December 9) Teague, the Union's chief negotiator, telephoned Sorrells, the Company's general manager. When Sorrells asked Teague what the Union thought of the Company's wage offer, Teague replied, "Well I think that is a cent and a half short (on the hourly rates) than what it is going to take to settle

[17] Teague mistakenly testified that this conference was held on November 25.

[18] Recker who was then vice president of Respondent but left its employ on September 28, 1958, testified that at the November 18 meeting, the parties were 7½ cents to 10 cents apart on hourly rates but at the December 4 meeting, this difference had decreased to between 5 to 7½ cents. Vacations were also discussed: The Company offered a week's vacation with pay for employees who work 1750 hours or more per year. The Union demanded 1500 hours and later revised their request to 1600 hours. No agreement was reached.

it . . . ."[19] Sorrells testified that during this conversation he asked Teague if he would convey the Company's definite wage offer to the union members for their approval or disapproval but that Teague refused, stating: [fol. 824] "No, I am not going to present it to our employees until we have finished the contract."[20] They then agreed to meet on December 13.

On December 11th and continuing through the 13th, a disastrous freeze occurred throughout the Florida citrus belt exceeding in severity any which had occurred since December 1934 and which resulted in a major catastrophe to the citrus industry. The meteorologist for the United States Weather Bureau in charge of the Federal-State Frost Warning Service for Florida testified that this was a major freeze which he defined as a continuous period of low temperatures. There were five major freezes during the 1957-1958 winter season. These occurred on December 11 to 14; January 9 to 11; February 4 and 5; February 14 and February 18 through 22. The average temperature for the months of December, January, and February were the lowest of any winter season in the records of the Weather Bureau for the State of Florida. The temperatures from December 11 through the 14th and on January 8 and 9 were below the critical point in most of Central Florida, including Polk County which is where Respondent's plant and citrus groves are located. For the first time in the history of the United States Weather Bureau, there was a fall of snow in this area of Florida. At approximately 4 p.m. on December 12, Sorrells telephoned Teague, advised him of the weather catastrophe and requested that the negotiating meeting scheduled for December 13 be postponed to December 17 to which Teague consented.

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[19] Teague testified that the Company offered an 8½ cents an hour increase and the Union was demanding 10 cents.

[20] Although Teague testified on cross-examination that he was keeping the union members informed as to what was being accomplished at the negotiating sessions, and that he had "several meetings with the employees" he was unable to recall approximately when he met with them. Pages 415, 417, transcript and see also pages 455-456.

On December 14, 1957, Teague received a letter from Sorrells which reads as follows:

> [fol. 825] On December 9, 1957, I wrote to you and stated that Adams Packing Association, Inc., was then willing to make certain specified proposals with reference to wages, hours, holidays and paid vacations, provided a fair and equitable text of the contract could be agreed upon.
>
> On Wednesday and Thursday of the present week Florida was the victim of a freeze which has resulted in a major catastrophe to the citrus industry. A very substantial part of the entire citrus crop has been completely lost, and cannot be salvaged. The economic loss to Adams will according be immediate and severe.
>
> You are therefore advised that Adams hereby withdraws the above-mentioned proposals made to you by the letter dated December 9, 1957.
>
> Let me state again that Adams is ready and willing to continue collective bargaining directed toward agreement upon an acceptable contract.

The next meeting was held on December 17. At the outset, McRae, the Respondent's attorney and chief negotiator, stated that when the Union Representatives "walked out" of the November 14 meeting, it was indicated at that time by the Union that they would draft and submit a proposed contract. He inquired if this had been done as the Company had not received it during the intervening month. When the Union stated that it had no written proposals of its own to offer at that time, the Company then submitted its own written proposed contract.[21] All the provisions of this contract were discussed by the Conferees and to quote Teague, "We reached agreement that day on everything except monetary items, which we didn't negotiate on * * *."

The reason why the Conferees were unable to negotiate with respect to "the monetary items" was explained by the Company's representatives at this meeting on December 17. [fol. 826] Sorrells told the Union's negotiating committee

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[21] This was the third written proposal that the Company submitted to the Union since negotiations began on July 11.

that the Florida Citrus Commission, a State regulatory body,[22] at meetings on December 14 and 16, had ordered an embargo to be placed on the out-of-State shipment of fresh fruits and also forbid the processing of all citrus fruit concentrates as of December 17 in order for the industry to determine the damage done to the fruit by the freeze. Moreover, explained Sorrells, because this was the first major freeze that had struck the citrus industry since it had first gone into the commercial production of citrus concentrates in 1945-1946, they did not know what effect the prolonged subnormal temperatures would have on fruit damaged by the freeze which was processed into concentrates. There was, Sorrells explained, no experience available as to what a processor could do with frozen oranges in making citrus concentrates. This was particularly serious, insofar as the Respondent was concerned, continued Sorrells, as the production of concentrates was "the heart of (Adams') operations." Sorrells testimony was corroborated by Tom B. Swann, a citrus grower and a member of the Florida Citrus Commission for 14 years, and also by George Westbrook, Chief Chemist of the Citrus and Vegetable Inspection Division of the Florida Department of Agriculture.

The effect of the freeze on the citrus crop, said Sorrells, would have a direct correlation to the Company's ability to pay the higher wage scale proposed in their offer of December 9. Until such time as they had an opportunity to investigate the freeze damage done to their members' groves, stated Sorrells, and had available to them the information on which to estimate the damage to the fruit crop in order to determine what their financial situation [fol. 827] would be, it would be impossible for them to know what they could afford to pay with respect to the Union's demand for higher wages for Respondents' employees.

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[22] The members of this Commission are appointed by the Governor of the State. It has authority to promulgate rules and regulations controlling the industry which have the effect of law. Due to this disaster, the Commission, in order to cope with the emergency, met on December 14, 16, 23, 30, January 3, 10, and on two other occasions later in the month.

However, Sorrells assured the Union's Negotiating Committee that even though this disaster had practically closed down their plant, and thus compelled the Respondent to withdraw their *wage proposal* for the time being that Adams was not withdrawing any of the *other proposals* of the contract that had already been agreed upon by the parties.

Sorrells testimony continues as follows:

> I told the committee that I would make every effort between * * * the 17th of December and whatever time we could set a meeting (after) the first of January, to try my best to evaluate the effects of the disaster and how it was going to affect our operations, and that if we could arrange a meeting that we would do our best, knowing that all the technical people were working on the problem, knowing that we were going to have some other (Florida Citrus) Commission meetings, that I would do my best to come up with the effect that this was going to have, in hopes that we might be able to make a monetary offer at that time. * * * I didn't say that we would make an offer; I stated plainly that I would do everything in my power, and with the knowledge of the Citrus Commission meetings, from our technical people and research department, that if they could come up with something that would enable me, help me to evaluate the situation that Adams was in, that I would do my best to come up with something if we could agree on a meeting. * * * Teague stated that he was going home for Christmas, to Texas, and we set the date of January 2nd, and it was mutually agreed to.

Q. At this December 17th meeting did you promise Mr. Teague and the Union to make an offer on January 2nd, 1958?

A. I certainly did not. I wouldn't have promised the Union to make an offer on January 2nd with the disaster [fol. 828] as we had. * * * We made the offer in good faith and we withdrew it in good faith on account of the disaster, and on the 17th, four or five days after the freeze, would not and did not say that I would make an offer. I told him that I would make every effort to try to determine what the disaster had done and how it would affect

them, and do my best to do that and come up with an offer if possible on the January meeting.

A union meeting was held the same evening as the negotiating session of December 17th in the ball room of the Winter Haven Hotel to which all employees in the bargaining unit were invited. At that meeting, which was presided over by Teague, a strike vote was taken and those present voted in the "affirmative."

Upon Teague's return from Texas, where he spent the Christmas holidays from December 20 to January 1, a meeting was held by the Company and Union at 10 a.m. on January 2, 1958. McRae began by announcing that the Company would honor its prior agreement made at the December 17 meeting to accept all the provisions of the proposed contract dated December 11 except the so-called monetary items. Sorrells was then called on by McRae to explain to the Union negotiating committee why it was impossible for the Company to make a definite offer at this time with respect to the employees wage scale. Sorrells stated that it was still too early to determine the effects of the freeze on the citrus fruit crop. It was impossible, he continued, to make any realistic estimate of its total pack until such time as Respondent completed harvesting the midseason crop and had started picking and harvesting at least a small portion of the Valencia crop which comprised the great bulk of the Respondent's fruit harvest and which moved into the fresh fruit market in late February and into processed form in March. Sorrells told the union representatives that he had gone out into the groves since their last meeting on December 17 and inspected the fruit [fol. 829] on the trees in an attempt to assess what damage had been done to the fruit. He also stated that he attended Florida Citrus Commission meetings to obtain damage information, spoken to technical experts who were working on the matter but that they were not yet able to determine the freeze damage and, as a consequence, the Company was unable to discuss wages until such itme as it was in a position to know what damage the freeze had inflicted on Respondent's operations. He did state, however, that his study up to then indicated that Respondent's production would be less than in previous years. He then went on to say that the United States Department of Agriculture's monthly estimate of the amount of citrus fruit available

for the fresh fruit market and for processing into concentrates would be issued on January 10th and, possibly, the Florida Fruit Commission also might have information by then, so that Respondent would be in a better position to discuss wages and if so, he would make every effort to make a definite offer by "the middle of January."[23]

Recker, Vice President and manager of the Canning Division, then explained to the union representatives that Respondent Adams processed fruit for members of the Association for a certain fixed amount per gallon of concentrate or juice, and that if the volume of production fell [fol. 830] off, the fixed costs would still remain approximately the same. He also explained that Adams was in a highly competitive position and that if the increased labor costs were passed on to the growers they might take their fruit elsewhere to be processed into concentrate. Recker also testified that the yield of finished product per box of fruit was expected to decrease because of freeze-damaged fruit.[24] After Recker completed his presentations, Sorrells

[23] Teague's testimony that Respondent stated it would not be in a position to discuss wages until the middle of February is not credited for the following reasons. General Counsel's Exhibit Number 26, is a letter dated January 4, 1958, from the Respondent to the Union which reviews what transpired at the January 2nd meeting. In that letter it is stated that the Respondent told the Union Representatives at the January 2nd meeting that it would not be in a position to make an offer with respect to wages "until around the middle of January," and they therefore suggested that "negotiations be actively continued at a mutually agreeable time later in January." If the Company's recital of what occurred at the January 2nd meeting was incorrect, it was incumbent on the Union to have denied it. Their failing to do so leads the trier of these facts to conclude that Respondent's version of what occurred with respect to this matter of dates is the correct one.

[24] George Westbrook, chief chemist for the Florida Department of Agriculture, testified that when citrus fruit is frozen, the yield of juice per box of fruit is diminished. He also testified that he recommended frozen oranges should not be processed into concentrate as frozen fruit adversely affects the flavor and quality of the concentrate.

then suggested to the union committee that the Conferees agree to meet in about two weeks—"around the middle of January." Teague refused to agree to this suggestion stating that the Company was stalling and that the Union would have to take whatever action was necessary to get a contract. With that parting remark, the Union Negotiators walked out of the meeting around noon.

On January 3, the day following the conference at which the Union Negotiating Committee walked out of the meeting and refused to set a date *for further continuance of the bargaining sessions*, the Respondent sent letters to its employees to which was attached a copy of the Company's wage offer of December 9. This letter recited Respondent's version of the contract negotiations between the Company and Union. It also stated that the Union had shown a lack of understanding of how great the effects of the freeze may be on the Company and requested the employees to urge their union representatives to give the Company additional time to appraise its financial position as a result of the freeze.

On January 7, Teague called a special meeting of the union members employed by Respondent. The members voted to authorize the negotiating committee to draft "a last and final proposal to the Company" as to what scale would be acceptable to the Union.

[fol. 831] On January 9, the Union sent a letter to the Respondent, characterized by Teague as an "ultimatum," setting forth their wage demands. The letter concludes by stating:

> Mr. Sorrells, this is the last and final proposal to Adams Packing Association in an effort to bring the contract to a conclusion. * * * unless this is acceptable to Adams Packing Association we have no alternative but to take action as we deem necessary to bring the issues to a conclusion. I will appreciate a prompt answer from you as to whether or not this is acceptable.

At the same time that the above-quoted letter was being written by the Union, another severe freeze occurred on January 8th and 9th which caused additional damage to the Florida citrus fruit crop. For the first time in the

history of the United States Weather Bureau, snow fell in this area of Florida from 8 a.m. to 11:05 a.m. on January 8 and from 1:30 a.m. to 2:30 a.m. on January 9.

On January 11, the Company answered the Union's letter of January 9th. In its January 11th letter, the Company stated that its position was essentially the same as it was at the last negotiating meeting of January 2nd and as stated in its letter of January 4th. The Company's letter continues as follows:

> Since our last communication with you, however, another severe freeze has hit the citrus area of Florida on January 8th and 9th, 1958 and has inflicted additional damage which will be suffered both this year and next. Let me say again that we are willing actively to continue negotiations at a mutually agreeable time later in January as we specifically stated in our letter to you dated January 4, 1958.

At the invitation of Thomas Owens, of Washington, D. C., Director of the Produce and Milk Division of the International Brotherhood of Teamsters, McRae and Sorrells met on January 17 with Owens at Lakeland, Florida. Owens [fol. 832] stated that his purpose in arranging this meeting was to determine if the Respondent Company would reinstate its proposal made on December 9, 1957, of an 8½ cents hourly wage increase. Sorrells reply, according to Owens, was that "due to the freeze that hit the citrus crop in the State of Florida that the Company was in no position to make any offer; they had to withdraw their offer because they were not in a position to make an offer without having a chance to determine how much damage the freeze had done to the citrus crop." When Owens inquired how soon the Company would be in a position to assess the freeze damage and make a wage offer, Sorrells replied, Owens testified, "the first of February, around some time in February, the first part of February." Owens testimony continues as follows:

> McRae asked me * * * when they determined how much damage had been done to the crop, shall we get hold of you to let you know our position? And I said, no, because I probably will not be here. You will get hold of Teague. And he said he would as soon as

> they were able to determine the extent of the damage and were prepared to make us an offer.

Additional freezes occurred on February 4 and 5; February 14 and 18 through the 22nd. Sorrells testified that they were not able to make an evaluation of the freeze damage until "somewhere in the first of March."

Commencing during the month of February 1958, a petition bearing the date of February 24th, was being circulated among Respondent's employees. This petition reads as follows:

> To Adams Packing Association Incorporated, The National Labor Relations Board. And All Others It May Concern: We the undersigned employees of Adams Packing Association Incorporated want to deal directly with the Company for a wage increase and all other conditions of employment. From this time on we do not want to be represented by the Teamsters Union.

[fol. 833] There were 428 valid signatures on this petition or between 57 percent and 58 percent of the 751 employees in the bargaining unit.

On Saturday, March 8, Larson, a company official, notified Sorrells that a group of employees would like to see him. A meeting was arranged for the following Monday, March 10, at which time Garfield Davis, an oil mill employee of the Respondent who was accompanied by a group of other employees, presented Sorrells with the above-mentioned petition. Davis advised Sorrells that the employees did not know, until they received a letter from the Company on January 3, 1958, that the Company had made a wage offer to the union negotiating committee on December 9, 1957. Davis, according to Sorrells, said: "They would like to deal directly with the Company from this time on. He said they didn't want to be represented by the Teamsters Union, and 'we ask that you give us a raise'. I told the group that I would take it under advisement and let them know, and that was the end of that meeting."

Sorrells again met with the "employees' committee" on March 15th and at that time he announced to them that the Company was putting into effect its wage offer of December 9, upon which the Union had taken no action. By

letter dated March 14, 1958, the Company notified its employees individually of the wage increase retroactive to December 18, 1957.

The next time the Union contacted the Company was when Teague telephoned Sorrells some time in August 1958 and asked him "whether or not there was a possibility that we could resolve the issue at hand * * *." Sorrells answered that he would take it up with their attorney, McRae, who was due to return from his vacation on August 20th. On or about August 22nd, Sorrells told Teague, according to Teague's testimony that:

> Mr. McRae advises me that we cannot legally deal with you until such time as you represent a majority of our people. We have on file today a petition signed by 56 [fol. 834] percent of our employees, stating that they do not want to be represented by the Union. Now if you have anything to offset that, then you contact us. Until then we will not discuss anything about a contract with you.

Contentions

Although the General Counsel's representative admits that because of the statute of limitations (Sec. 10 (b)), no findings of unfair labor practices can be made on the basis of facts occurring prior to August 20, 1957, she claims in her oral argument (made after she had presented her case and when Respondent moved for the dismissal of the complaint) that the evidence shows that subsequent to that time the Respondent violated Section 8 (a) (5) by refusing to negotiate with the Union pending the Board's decision of the Respondent's petition of July 5, 1957, requesting a determination of the Union's compliance with Section 9 (b) of the Act; by the Company requesting an extension of time from the Union in order to afford Sorrells, who became Manager on September 1st, to become familiar with the operations of the Company; that Sorrell's letter of January 3, 1958, to the employees to which was attached a copy of its December 9th wage offer, and which stated the Company's version of its position in the bargaining negotiations and asking the employees to urge their union representatives to give the Company additional time to make a wage offer because of the freeze "was designed to

foment employee dissatisfaction with the union as their bargaining representative, and thus to inspire the employees to rid themselves of the Union as such bargaining agent." The Respondent's letter of January 3rd, argues the General Counsel, while it purports to present to the employees a factual review of the bargaining negotiations, withheld material facts from them, so that they could not make a fair appraisal of the Union's efforts in their behalf. The General Counsel cites as an example of this: Sorrells' [fol. 835] failure to acknowledge any responsibility for the fact "that actual bargaining negotiations had not gotten under way until September 1957." Also (Sorrells), the General Counsel argues, did not make reference in his letter of January 3rd to the fact that union representatives had met subsequent to the November 14th meeting on two occasions with Sorrells and Recker and that the Company's wage proposal was largely the result of those meetings. Nor did Sorrells mention in his letter to the employees, continues the General Counsel's argument, that Teague agreed, in view of the freeze emergency to postpone the December 13th meeting to December 17th. However, the General Counsel acknowledges, that the Company did not necessarily evidence bad faith "by asking the Union to reconsider the wage offer temporarily, in view of the freeze."

Respondent, on the other hand, contends that an appraisal of all these 13 bargaininig sessions between the parties from July 11, 1957, to January 16, 1958, and the circumstances surrounding the negotiations, show that it was at all times acting in good faith and that it had bargained and continued to bargain in good faith at all times. The Company denies that its conduct during the negotiations constituted a refusal to bargain, contending that it fully discussed and negotiated in good faith with the Union on all phases of the matters under consideration. It had, argues Respondent, agreed to meetings and met with the Union at intervals which could not be considered unreasonable when it is recalled that Sorrells has assumed the management of Adams on September 1st; that at every meeting the Respondent thoroughly discussed all issues with the Union; Adams made proposals, counterproposals and that as a result of concessions on its part agreement was reached by November 14th on all matters except mone-

tary items and that even as to the latter, it had made a definite offer of 8½ cents on December 9 which would have been firmed up except for the unforeseeable disaster inflicted on the citrus industry by the various freezes which [fol. 836] began on December 11th and did not end until the latter part of February. This catastrophe, argues Respondent, was just cause for withdrawing on December 14, the wage offer which had been made on December 9.

Discussion and Conclusions

The General Counsel's contention is not well taken that the Respondent violated Section 8 (a) (5) by refusing to negotiate with the Union pending the Board's decision of the Respondent's petition of July 5, 1957, which requested a determination of the Union's compliance with Section 9 (h) of the Act as this did not result in any prolonged delay or persistent postponement of the negotiations. Moreover, isolated and individual incidents cannot be used to make a finding of an unfair labor practice; the overall actions and totality of conduct of the Respondent in the context of all the circumstances revealed by the evidence must be considered in resolving this contention. The test to be applied is whether it is to be inferred from the totality of the Respondent's conduct that it went through the motions of negotiations as an elaborate pretense with no sincere desire to reach an agreement, if possible, or that it bargained in good faith but was unable to arrive at an acceptable agreement with the Union. In other words, a refusal to bargain is usually based on a *pattern of conduct* rather than on a single act. Moreover, it is found that Respondent's request to hold negotiations in abeyance during the pendency of the above-mentioned petition is not a sufficient basis on which to predicate a finding of an unfair labor practice as it was not, under the circumstances, as hereinafter explicated, an unreasonable request and furthermore, there is no evidence which casts doubt on the Respondent's bona fides in this regard. This is evidenced by the fact that although the Board did not rule on the Company's petition until September 26, 1957, the Company, nevertheless, met with the Union on September 17 to attempt to negotiate a collective bargaining agreement even though

[fol. 837] Sorrells had assumed the duties of General Manager of the Respondent Company (because of his predecessor's critical illness) only 17 days before so that he only had a little over 2 weeks to familiarize himself with the Company's operation before he entered into bargaining negotiations with the Union.[25]

The evidence shows that the Respondent Company bargained in good faith as evidenced by the fact that it made expeditious and prompt arrangements for meeting and conducting negotiations;[26] it met at reasonable times with the Union;[27] it repeatedly asserted its willingness to continue to do so, it made proposals, counterproposals and concessions, and most significant is the fact that as early as November 7th, agreement had been reached by the parties on all provisions except the monetary items.[28] Corroborative of this conclusion is Teague's own testimony that the area of agreement between the parties between November 7th and December 9th when the Company proposed a definite wage scale, was "good"; yet the union

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[25] See *American Laundry Machinery Co.*, 76 NLRB 981, 983 and footnote 11.

[26] During the same period of time that Respondent was conducting negotiations with the Union, Teague was engaged in contract negotiating conferences with the Minute Maid Corporation on April 9, April 17, April 25, May 8, May 9, May 22, May 23, June 20, June 21, June 27, August 28, August 29, September 12, September 19, October 9, October 10, October 23, November 6, November 19, December 19, 1957, and February 6 and 13, 1958. See *Minute Maid Corp.*, 12-CA-305, IR-428 at Page 6 of the Intermediate Report which was issued on October 24, 1958. Teague was also engaged in negotiations with the Florida Citrus Canners Cooperative on October 9, 14, 22, 31, December 4, December 18, 1957, and January 28, 1958. See *Florida Citrus Canners Cooperative*, 12-CA-307, IR-405, issued on August 29, 1958.

[27] Contrary to the General Counsel's assertion, the first time the Company and Union met was on July 11, 1957. See Page 5, *supra* and footnote 9.

[28] The matter of the departments was not fully agreed upon although there was agreement in principle.

negotiators "walked out" of the bargaining sessions on two occasions; November 14th and January 2, 1958. Teague [fol. 838] admitted that when the union committee walked out of the January 2nd bargaining session they refused to agree on a date for a future meeting thereby bringing the negotiations to a close. And this "walk-out" occurred, in spite of the fact, that Sorrells requested the union negotiators to give the Company until "the middle of January" to attempt to assess the freeze damage because the United States Department of Agriculture's monthly crop estimate of the amount of anticipated citrus fruit available for harvesting would be issued on January 10th, and perhaps the Florida Citrus Commission would also issue some additional statistics by that time.

Even though the Union refused to accede to this reasonable request and broke off negotiations by walking out of the January 2nd meeting and refusing to schedule a future meeting, nevertheless, the Company wrote a letter to the Union on January 4th, restating its position and expressing the hope that the Union would agree to meet again in order to continue negotiations. The Union answered this request by its letter of January 9th which Teague in his testimony characterized as an "ultimatum."[29]

Moreover, the only complete contract proposal submitted by the Union was at the first meeting on July 11th. When the Union walked out of the November 14th meeting, Teague promised he would submit a counterproposal at the next meeting. However, when the next meeting was held on December 17th, the Union had no counterproposal, nor did it submit any *complete* proposed contract at any time thereafter,[30] whereas the Company submitted three com-

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[29] In this letter the Union stated it was their "last and final" offer and unless it was acceptable to the Company, the Union had no other alternative than to take such action as it deemed necessary to bring the issue to a conclusion.

[30] The Union submitted a proposal on January 9th as to wages only but not a complete contract. See *Landis Tool Co.*, 89 NLRB 503, 507, where it was held that a refusal to make a counterproposal when requested is evidence of bad faith.

[fol. 839] plete contract proposals on three different occasions during the course of these negotiations.

Teague maintained that the freezes which occurred on December 11th to the 13th and on January 8th and 9th were pretexts seized upon by the Respondent as an excuse to stall negotiations even though he acknowleged on cross-examination that all the contract proposals which had been agreed on previous to the freeze were not withdrawn by the Company. Nevertheless, Teague maintained that the Company's request that they be permitted to withdraw their definite wage proposal of December 9 (made 2 days before the onset of the first freeze) until such time as they could assess the damage inflicted by the freeze, was evidence of bad faith on the Company's part. Refuting this is Recker's testimony, a witness produced by the General Counsel, and characterized by her as "impartial" who testified that it was impossible as of December 1957, or January 1958, to estimate the freeze damage. Recker also testified that the damage suffered by the citrus crop as of January 2nd could not be determined until about late February or early March. Dr. Westbrook, Chief Chemist for the Florida Department of Agriculture, an acknowledged expert on the Florida citrus industry, who testified that he was familiar with Respondent Company's operations, stated that in his opinion he did not believe Respondent could have determined as of January 2nd the damage suffered by it and that such determination could not have been made "until the spring." Moreover, he testified that the subsequent freeze of January 8th and 9th "further complicated the picture" and created even more uncertainty as to the future of the industry. Tom B. Swann, a member of the Florida Citrus Commission for 14 years, testified that it was impossible to estimate the freeze damage as of January 2nd. Sorrells testified that inasmuch as the last freeze did not abate until the latter part of February, they were unable to estimate their total pack and financial situation until "somewhere in the first of March."

[fol. 840] It is found, therefore, that as of January 2nd, there was no way by which the extent of the loss and the effect on Respondent's operations and consequent financial position could be gauged. It is further found that the Respondent's withdrawal on December 14, of

its wage offer of December 9 was a result of unforeseeable circumstances which prevailed in the citrus industry as a result of this freeze. This, in turn, would necessarily influence any negotiations for a contract as wages and other cost items would be affected by the freeze damage sustained by the Company. It is found, therefore, that Respondent was acting in good faith when it withdrew its wage offer on December 14.

Although Teague accused the Respondent of using the freezes as an excuse and pretext and branded the withdrawal of their wage offer of December 9th as bad faith and their request for additional time to assess the freeze damage as stalling, he nevertheless, made no attempt to determine for himself whether Respondent's contentions were true and if there was any merit to Respondent's plea for additional time. When he was asked if he made any independent effort to determine what was the effect of the two freezes of December 11th and January 8th on the Company's operations, he answered in the negative. He admitted that he did not go out into the groves to examine the fruit nor did he make any effort to obtain freeze damage information from the various State and Federal agencies to Florida in order to determine for himself whether Respondent's request for an additional 2 weeks "until the middle of January," in order for them to evaluate their financial position—was a reasonable request. Instead, he "walked out" of the January 2nd bargaining session and issued an "ultimatum" to the Company in his letter of January 9.

It was Teague's actions in these negotiations which prevented the Respondent's efforts to reach agreement with the Union. After this major disaster struck the citrus industry on December 11 and after the negotiating [fol. 841] session of December 17, in which the Company withdrew its December 9th wage offer, because of its inability at that time to assess the freeze damage, nevertheless, Teague called a meeting of the union membership that same evening at which a strike vote was taken and approved by the members. Moreover, Teague did not communicate the Company's wage offer of December 9th to the union members nor did he submit a complete contract counterproposal after the initial meeting on July 11, 1957.

Then too, Teague's vague and cryptic assertions that the Respondent's December 14th letter (in which it withdrew its proposal with respect to wages because of the freeze) convinced him that the Respondent had conspired with other Florida citrus fruit companies (with whom the Union was also negotiating at the same time) to bring about a complete disruption of the bargaining negotiations then being conducted by the Union with Respondent and these other companies—is not borne out by the record. Teague testified that Respondent and these other citrus fruit companies were looking for some kind of an excuse to break off negotiations * * * and to me that is proof enough that all (these citrus companies were) just looking for an excuse to keep from bargaining and signing a contract with the Union." The transparent sophistry of this non sequitur is apparent when it is considered Teague acknowledged that Respondent had never withdrawn the other contract provisions which had been agreed to but merely its wage offer. The withdrawal of the wage offer was tentative and only until such time as the Company could determine the extent of the freeze damage so that it would be in a position to assess the extent of its operations for the balance of the season. This, in turn, would have a direct correlation to the Company having the necessary statistical information upon which to evaluate its ability to meet the wage demands being made by the Union. Moreover, the unreasonableness of Teague's attitude is manifested when the following testimony is considered:

> [fol. 842] Trial Examiner: As I understand it, you felt that with this assertion by the Respondent that this freeze compelled them to reconsider the negotiations they had been carrying on with you—and there is no question that there was a freeze—you felt that there was bad faith on their (Respondent's) part; am I correct?
> Teague: Yes, sir.

The cumulative effect of these various circumstances referred to above, in conjunction with the Union's maladroit bargaining technique, convinces the Trial Examiner, and it is so found, that Respondent's withdrawal on

December 14 of its December 9th wage offer was done in good faith and that it was not a pretext under which the Company attempted to avoid its obligation to continue negotiations in good faith with the Union. It is further found that the Company did not engage in the employment of dilatory tactics in its bargaining negotiations with the Union. It is also found that because of the freeze the Company was in no position at either the December 17th or January 2nd negotiating conferences to make a positive wage offer.

With respect to the period of time prior to the December 11th freeze, it is uncontradicted that all items of the proposed contract were agreed on as early as November 14th except the so-called monetary items, and as to them, the Company had made a definitive offer on December 9th, two days prior to the freeze. It is found, therefore, that the Company bargained in good faith at all times prior to and subsequent to the freeze and that negotiations were broken off due to the Union's unjustified "walk out" from the January 2nd meeting, and its refusal to set a date for a future meeting. When the Union Representatives terminated negotiations for the second time on January 2nd and then delivered its "ultimatum" letter of January 9th, they so totally repudiated their own bargaining obligations under the Act as to have relieved the Respondent of its statutory duty of dealing with them [fol. 843] thereafter. Not only were these reasons a sufficient legal basis for the Respondent on August 20, 1958, to refuse to resume bargaining negotiations, but, in addition, more than one year had elapsed since the Union's certification, and, most important, the Union no longer represented a majority of the employees.[31]

The Union's manner of carrying on bargaining negotiations leaves much to be desired. The Union's affirmative actions, including its neglect to file any written proposed contract after the July 11th meeting, its two walkouts, its

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[31] *N. L. R. B.* v. *Inter City Advertising Co.*, 154 F. 2d 244 (C. A. 4) where it was held that when a union majority has been dissipated without fault on the part of the employer, the union no longer possesses the authority to speak for the employees.

strike vote, its unreasonable attitude with respect to acceding to the Company's suggestion that it be given additional time to assess the freeze damage,[32] its refusal to investigate the truth of the statements made by the Company with respect to the effects of the freeze on its operations, its refusal to agree on a future meeting date when they walked out of the January 2nd meeting, its "ultimatum" letter of January 9th, written at the very time that another severe freeze struck Respondent's citrus groves,—all these actions on the part of the Union removed the possibility of affecting negotiations and thus precluded the existence of a situation in which the Respondent's own good faith could be tested. If it cannot be tested, its absence can hardly be found.[33]

The complaint also alleges that the Respondent Company refused to bargain in good faith by its course of conduct in assisting a movement for rejection of the Union by its employees. In attempting to prove this allegation of the complaint the General Counsel produced the following evidence.

[fol. 844] Charles Scott, an employee of Respondent and Vice President of the Charging Union, testified that some time during the month of February 1958, his shift foreman, Charles Whitney, told him during working hours that if a sufficient number of workers signed the petition for decertification of the Union that he (Scott) would receive an increase in pay. However, testified Scott, his foreman Whitney "didn't ask me if I would sign the petition, or if I was going to, or he didn't say that he had a petition." Scott also testified that Whitney said to him: "* * * the teamsters union couldn't get (Scott) reclassified or get me a raise; we would have to get rid of the Teamsters Union before either would happen." Whitney denied that he ever discussed the petition with Scott "nor anybody else" or that he ever asked Scott to sign it or that he spoke with

[32] It will be recalled, that the General Counsel's representative acknowledged that Respondent did not necessarily evidence bad faith "by asking the Union to reconsider the wage offer temporarily, in view of the freeze." Page 14, *supra*.

[33] *Times Publishing Company*, 72 NLRB 676, 683.

Scott about the possibility of reclassifying him in his work or the possibility of obtaining a raise for him. No evidence was introduced as to whether Whitney was a supervisor.

L. P. Gray, an employee and member of the Union, testified that a fellow-employee named Deese, late in February and the early part of March 1958, asked him if he would sign a decertification petition. "He said the Company wasn't never going to sign no contract with no Teamsters Union." Grey refused to sign the petition.

Leedon Grey, an employee and member of the Union, testified that in the beginning of March, shortly before the Respondent announced on March 14, 1958, that the employees were being given a wage increase, Deese, spoke disparagingly about the Teamsters Union and asked Grey on two occasions to sign the decertification petition. Grey refused. When Grey was asked on direct examination who was chiefly responsible for the circulation of the petitions to get rid of the Charging Union, he answered, Garfield Davis, an employee of Respondent.

[fol. 845] John R. DeBarry, an employee and member of the Union's negotiating committee, and the Union's secretary, testified that Deese asked him to sign the decertification petition but that he refused. On cross-examination he testified that he never saw an official or supervisor of the Company circulating the petition or requesting anyone to sign it.

Elmer Jones, an employee until March 1958, and President of the Union, testified on cross-examination that "I do not have any evidence that this petition was started by the Company." He also testified that no company official or supervisor ever requested him to sign the petition.

John R. Blackburn, an employee, testified that Deese on more than one occasion asked him to sign the petition but that he refused.

W. E. Roberts, an employee and member of the Union, testified that during working hours, Deese asked him if he would sign the petition. Roberts refused. L. P. Grey, another employee, who was present when this occurred, asked Deese "why he was trying to get the boys to sign this petition. Deese replied, according to Roberts: "a man in my position, if the man come in and lays the papers

on the desk and asks me to get the boys signed up, why, that is all I can do."

Gene Guy, an employee, and member of the Union, testified that Deese "asked (him) did I want to sign a petition * * * and I told him No."

Mattie Bowden, an employee, testified that she was asked "outside the plant" by Dorothy O. Davis and a woman named Velear, both employees of Respondent, to sign the petition.

The General Counsel's representative contends that the Respondent, acting through Deese, who she alleges is a supervisor within the meaning of Section 2 (11) of the Act, improperly participated in the circulation and solicitation of signatures for the petition by promoting a movement to decertify the Union as the bargaining re- [fol. 846] presentative of Respondent's employees. Respondent, on the other hand, denies Deese is a supervisor or that it initiated and supported the decertification petition in any way whatsoever.

There is no sustaining evidence that the Respondent initiated, fostered or supported the petition for decertification or that it induced employees, directly or indirectly, to sign it or that it knew about the petition prior to the time it was filed. Furthermore, those employees who stated that they were asked to sign the petition, did not testify that the request to sign was accompanied by threat of reprisals if they did not do so.

Assuming, but not accepting the premise that any actions of Deese with respect to the petition for decertification infringed upon the employees' rights guaranteed to them by the Act, nevertheless, it must still be found that Respondent is liable for the statements and conduct of Deese on the theory of respondeat superior. The question whether Deese is a supervisor within the meaning of Section 2 (11) of the Act must be resolved upon examination of all the evidence in the case. Conclusory statements that the particular individual can "effectively recommend" changes in the status of employees and that he exercises "independent judgment" do not establish supervisory authority. It is also necessary to note that Congress in defining the term "supervisor" did not include "employees with minor supervisory duties." Congress "distinguished

between straw bosses, lead men,[34] setup men, and other minor supervisory employees, on the one hand, and the supervisor vested with such genuine management prerogatives as the right to hire or fire, discipline, or make effective recommendations with respect to such acts."[35] There is no substantial evidence that Deese had authority [fol. 847] to hire, fire, or discipline employees, as well as the authority to make effective recommendations with respect to such acts.

Applying the above indicia to the evidence in this case leads to the conclusion that Deese is not a supervisor within the meaning of Section 2 (11) of the Act. He was an hourly worker who punched a timeclock like others; he operated the machines in the feed mill, the same as the other rank-and-file employees, and he did not have any responsibility for making out reports. Moreover, Deese voted in the Board election held on February 8, 1957, in which the Charging Union was certified as the collective bargaining representative of the Respondent's employees. It is found, therefore, that Respondent is not liable for the conduct and statements of Deese.

The complaint also alleges that Respondent committed an unfair labor practice when it granted a wage increase to its employees in the bargaining unit on March 14, 1958, retroactive to December 18, 1957. It is undenied that the wage increase of March 14, 1958, was in the same amount that had been offered by the Respondent on December 9 to the Union's negotiating committee. It is well settled that a grant of an increase in pay made by an employer after the same proposal has been made by the employer in the course of collective bargaining but has been left unaccepted in those negotiations is not an unfair labor practice.[36] Moreover, *the Union was not the bargaining agent of Respondent's employees at the time the*

[34] William M. Lawson, Superintendent of the by-products mill, testified that Deese, who was under his supervision, was a "leadman" to whom he looked to and held responsible for carrying out his orders.

[35] *United States Gypsum Company*, 118 NLRB 20.

[36] *N. L. R. B.* v. *Crompton-Highland Mills, Inc.*, 337 U. S. 217, 224.

increase was granted (which was more than one year after its certification) as approximately 57 percent of the employees in the bargaining unit had repudiated the Union by the disavowal petition which they presented to Respondent on March 10, 1958.[37]

[fol. 848] It is found, therefore, upon the basis of the entire record, and the applicable law, that the General Counsel has failed to sustain the burden of proving by a preponderance of the credible evidence that the Respondent bargained in bad faith with the Union. Nor is the Trial Examiner persuaded that the evidence is substantial enough to support a finding that the Respondent's conduct constituted a refusal to bargain within the meaning of Section 8 (a) (5) of the Act. In view of the foregoing conclusions, and upon the entire record, it is found that the evidence warrants no finding that the Respondent committed unfair labor practices within the meaning of Section 8 (a) (5) and (1) of the Act, and it will therefore, be recommended that the complaint be dismissed in its entirety.[38]

Dated at Washington, D. C., this 1st day of July, 1959.

Henry S. Sahm, Trial Examiner.

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[37] *Celanese Corp.*, 95 NLRB 664, 668 et seq; Old Line Insurance Co., 96 NLRB 499, 503-504; *Teamsters* v. *N. L. R. B.*, 233 F. 2d 233 (C. A. 7).

[38] The conventional "conclusions of law" which are customarily repeated at this point are omitted as they will be found in the body of the Report.

[fol. 849] UNITED STATES OF AMERICA

National Labor Relations Board

I, Ogden W. Fields, Executive Secretary of the National Labor Relations Board, being duly authorized by the Rules and Regulations of said Board, do hereby certify that annexed hereto is a full, true, and complete copy of Trial Examiner Henry S. Sahm's Intermediate Report issued July 31, 1959, and the Board's Order issued September 15, 1959; the same being known upon the records of the Board as Case No. 12-CA-339, and entitled: Adams Packing Association, Inc. and Citrus, Cannery, Food Processing and Allied Workers, Drivers, Warehousemen and Helpers, Local 444, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America.

In Witness Whereof, I have hereunto subscribed my name and affixed the seal of the National Labor Relations Board this 24th day of March, A. D. 1960 at Washington, D. C.

Ogden W. Fields, Executive Secretary.

[fol. 850] BEFORE THE NATIONAL LABOR RELATIONS BOARD

Case No. 12-CA-339

ADAMS PACKING ASSOCIATION, INC. AND CITRUS, CANNERY, FOOD PROCESSING AND ALLIED WORKERS, DRIVERS, WAREHOUSEMEN & HELPERS, LOCAL 444, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA

ORDER—September 15, 1959

On July 31, 1959, Trial Examiner Henry S. Sahm issued his Intermediate Report in the above-mentioned proceeding, finding that the Respondent had not engaged in certain unfair labor practices and recommending that the complaint herein be dismissed in its entirety.

The case having been transferred to the Board and no statement of exceptions having been filed with the Board, and the time allowed for filing such exceptions having expired,

Pursuant to Section 10 (c) of the National Labor Relations Act, as amended, and Section 102.48 of the National Labor Relations Board Rules and Regulations—Series 7, as amended, the Board has adopted the findings, conclusions and recommendations of the Trial Examiner as contained in the Intermediate Report and the complaint is hereby dismissed in its entirety.

Dated, Washington, D.C., September 15, 1959.

By direction of the Board:

Frank M. Kleiber, Executive Secretary.

[fol. 851] [File endorsement omitted]

IN UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

Civil No. 18186

NATIONAL LABOR RELATIONS BOARD, Petitioner,

vs.

FLORIDA CITRUS CANNERS COOPERATIVE, Respondent

MOTION FOR LEAVE TO INTERVENE AS CO-PETITIONER—Filed October 10, 1960

Comes now, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, Citrus, Cannery, Food Processing and Allied Workers, Drivers, Warehousemen & Helpers, Local #173, and files this, Motion for Leave to Intervene, and as grounds therefore, shows:

1. This proceeding arises under Section 10(e) of the National Labor Relations Act, 29 U.S.C. Section 160(e), upon the Petition of the National Labor Relations Board to enforce its order.

2. That the Movant was a party to the action before the National Labor Relations Board having filed with said Board the charge upon which the Petitioner's order is based.

3. That any Order entered by this Honorable Court will affect the rights of the Movant.

4. That, in order to protect the rights of the Movant, it is necessary to allow the Movant to intervene herein.

5 The Movant does hereby adopt all the pleadings, actions and other things whatsoever heretofore filed or done herein by the National Labor Relations Board as its own in the same manner as if the Movant had filed such pleadings and taken such actions.

6. The Movant hereby waives all rights to oral argument in said cause and declares that said Movant has no intention and does not seek to argue any matter whatsoever herein.

Wherefore, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, Citrus, Cannery, Food Processing and Allied Workers, Drivers, [fol. 852] Warehousemen & Helpers, Local #173, moves this Honorable Court for an Order For Leave to Intervene as a Co-Petitioner in this action.

Hardee & Ott, By: Frank E. Hamilton, Jr., Attorney for Movant, 308 Tampa Street, Tampa, Florida.

Certificate of service (omitted in printing)

[fol. 853] [File endorsement omitted]

In United States Court of Appeals for the Fifth Circuit

No. 18186

[Title omitted]

Respondent's Objection to Intervention—Filed October 11, 1960

Comes now the Respondent, Florida Citrus Canners Cooperative, by its undersigned attorneys, and objects to the Motion for Leave to Intervene, on the following grounds to-wit:

I

That there is no authority in the Act or elsewhere which permits intervention in this Court. See *Haleston Drug* (1950) (CA-9), 190 F. 2d 1022.

II

That this proceeding is in the public interest, prosecuted by an authorized agency of the United States and private parties have no rightful place in such proceedings. See *Aluminum Ore Co.* vs. *NLRB* (1942) (CA-7), 131 F. 2d 485.

III

That the Board is the sole guardian of the rights of the employees as a public agency acting in the public interest to assure protection of the employees. *Amalgamated Workers* v. *Consolidated Edison*, 309 US 261.

Respectfully submitted this 11 day of October, 1960.

Hamilton & Bowden, By Albert H. Miller Jr., of Counsel of Record for Respondent.

Address of Counsel: Hamilton & Bowden, 1056 Hendricks Avenue, Jacksonville 7, Florida.

[fol. 854] [File endorsement omitted]

IN THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 18,186

[Title omitted]

Petition for Enforcement of an Order of the National Labor Relations Board sitting at Washington, D. C. (Florida Case)

ORDER DENYING MOTION FOR LEAVE TO INTERVENE AS CO-PETITIONER—October 11, 1960

Before Jones and Brown, Circuit Judges and Carswell, District Judge

By the Court:

It is Ordered that the Motion for Leave to Intervene as Co-Petitioner, filed by International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, Citrus, Cannery, Food Processing and Allied Workers, Drivers, Warehousemen & Helpers, Local #173, be, and the same is hereby Denied.

October 11, 1960

[fol. 855] MINUTE ENTRY OF ARGUMENT AND SUBMISSION—October 12, 1960

(Omitted in printing)

[fol. 856] IN THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 18186

NATIONAL LABOR RELATIONS BOARD, Petitioner,

versus

FLORIDA CITRUS CANNERS CO-OPERATIVE, Respondent

Petition for Enforcement of an Order of the National Labor Relations Board, sitting at Washington, D. C.

OPINION—March 27, 1961

Before Jones and Brown, Circuit Judges, and Carswell, District Judge

Jones, Circuit Judge: On February 6, 1957, as the result of an election held on January 29, 1957, an American Federation of Labor affiliate was displaced, as the bargaining representative of the respondent's employees at its Lake Wales, Florida, plant, by International Brotherhood of [fol. 857] Teamsters, Chauffeurs, Warehousemen and Helpers of America, Citrus, Cannery, Food Processing and Allied Workers, Drivers, Warehousemen and Helpers, Local No. 173, which, for the sake of brevity, will generally be referred to as the union. At the respondent's plant citrus fruit is processed into concentrate, single strength juice, and grapefruit sections.

The union delayed until April the making of any request for the commencement of bargaining. Several meetings were held between April and August. Of these there is little in the record, although it appears that progress was made in the negotiations during this period. Meetings were held in August and one meeting was held on September 19th. Four sessions were held in October.

Differences were disclosed in the respondent's desire for management prerogatives and no-strike clauses, and maintenance of standards, hot cargo, separability and savings clauses desired by the union. At the last of the October meetings the union agreed that the next move was up to it.

On December 4, M. A. Stephenson, the respondent's production manager, and David F. Wingate, the union's chief representative, had a "man to man" talk, each expressing his personal views and neither of them attempting to bind his committee. There is a wide divergence between the testimony of Stephenson and Wingate as to what transpired at this interview. The Examiner, apparently, did not wholly believe either, since he found, "The true posture of this private meeting lies somewhere between the respective claims." The Examiner rejected the view of Wingate [fol. 858] "that about all that was left was to call the committee together to ratify" the results which he and Stephenson had reached. But the Examiner found that "the notes and the discussions indicated that an agreement was not only possible but near." Such an inference was at variance with the testimony of Stephenson. It is, we think, not particularly vital to determine whether the facts regarding this private and "off the record" meeting were as related by Wingate, or by Stephenson, or, as the Examiner found, "somewhere between the respective claims." It was nothing more than what it purported to be and no reference was made to it in the subsequent bargaining sessions.

The next meeting was scheduled for December 18th. The Examiner and the Board have found that on and after this date the respondent refused to bargain in good faith.

On the nights of December 12 and 13 disastrous freezes occurred in the Florida citrus belt. There was no way, so the Examiner found, by which the extent of the loss and the effect on the industry could be gauged at that time. M. H. Walker, General Manager of the respondent, had been informed that because of the freezes other Teamsters locals had agreed to the suspension of negotiations with other citrus processors in order for the latter to appraise their situations in view of the freezes. Walker came to the meeting of December 18th which commenced about two o'clock in the afternoon, intending to ask for

a delay in negotiations. This intention was announced at the opening of the meeting. The chief union representa- [fol. 859] tive, David F. Wingate, refused to listen to any statement on behalf of the respondent and insisted on first stating his position. The chief union negotiator informed the respondent that the freezes were not a factor which would be considered in negotiations. He informed the respondent's representatives that the union's negotiating committee was authorized to call a strike whenever it saw fit. He gave the respondent a deadline of four o'clock that afternoon to agree upon a contract or give assurances that a contract would be agreed upon. A strike was the alternative tendered by the union if the respondent refused to meet the union's ultimatum. Confronted with the union's strike threat, the respondent's general manager made no request for a delay in negotiations. He said "The clear unmistakable implication of your remarks, Mr. Wingate, is that if we don't sign a contract with you by tonight you will strike. This is a threat. I don't like threats, I don't respond under the pressure of threats, and I have nothing more to say." The meeting broke up. The union made no effort to prolong it.

The Examiner and the Board reached the conclusion that Walker should have made his plea for suspension of negotiations, but we see no reason why he should have done so in view of Wingate's declaration that, freezes or no freezes, the respondent must, within two hours, commit itself to a contract. The doing of a useless and futile thing is no more required in collective bargaining between an employer and a labor union than in other activities. The Examiner and the Board reached the conclusion that, notwithstanding the uncertain effects of the freezes, the [fol. 860] unwillingness of the union to consider, or even hear a request for a delay until the effects of the freezes could be appraised, the refusal of the union to consider the freezes in bargaining, and notwithstanding the union's demand for a contract or a guarantee of one within two hours, the respondent should have attempted to bargain.

The Board has held in Adams Packing Association, Inc., 44 L L R M 1571, and this Court has held in *N.L.R.B.* v. *Minute Maid Corporation*, 283 F. 2d 705, that the freezes here involved justified the insistence by Florida citrus processors upon a postponement of bargaining on economic

issues until the effect of the freezes could be appraised. The Examiner found that a reasonable postponement would have been in order. The Wingate ultimatum not only demanded a bargaining on these issues (if it can be said that bargaining rather than yielding to the union terms was intended), but the reaching or guaranteeing of an agreement within two hours. The refusal of the union representatives to consider a request for a delay because of the freezes, and we do not see how any other effect can be given to the Wingate statement, placed on the union, and upon it alone, the responsibility for creating an impasse and for the termination of the ineffective meeting of December 18th.

On Christmas Day, M. A. Stephenson, the respondent's production manager, was at the plant, which was not operating that day. Also at the plant was J. E. Holly, then acting as a watchman. Holly quoted Stephenson as saying [fol. 861] that a strike would be foolish, that it might close the plant and good men might lose their jobs; that they would all get along better if the union was "kicked out;" that the Company might have to meet with the union again for a time or two but the Company did not intend to sign a contract with the union and there would be no more meetings with the union after February 6 when the union could be decertified. Holly quoted himself as saying he was disgusted with the talk of a strike and dissatisfied with the conduct of the negotiations by the union representatives. He quoted Stephenson as suggesting that Holly and other dissatisfied employees should attempt to form a group to begin decertification proceedings, and as offering to procure legal counsel for such a group. Holly related that Stephenson told him that, in a few days, a pay raise would be posted on the bulletin board which would give the employees an incentive to get rid of the union. Stephenson's version of the conversation was vastly different. He denied, among other things, proposing that Holly initiate decertification proceedings and denied telling Holly that no contract would be made with the union. Stephenson's statement about a proposed pay raise, as he related it, was made in response to Holly's inquiry and was that the respondent was considering making a proposal on wages to the union. The Examiner credited the testimony of Holly and discredited the testimony of Stephenson.

On the direct conflicts between the testimony of the two, the General Counsel's burden of proof, if sustained, is carried only by reason of the determination of the Examiner that Holly is to be believed and Stephenson is not. Holly is not shown to have taken any part in any effort to [fol. 862] decertify the union. It is not shown that he either encouraged or discouraged adherence to the union. He related conversations with other employees who were opposed to the union but their opposition is not shown to have been inspired by or known to the respondent. Our unwillingness to rely upon the crediting of Holly by the Examiner and his discrediting of Stephenson is hereafter set forth.

On January 4, 1958, the respondent submitted to the union a proposal for a pay raise of 5½ cents per hour. A letter recited the difficulties resulting from the freezes and stated that the offer compared favorably with raises granted by other companies. Wingate, the principal negotiator for the union inquired, so he testified, whether a contract proposal was to accompany the pay raise offer and was told, so he testified, that the Company was not submitting a new contract proposal. It was Stephenson's testimony that he told Wingate that respondent's contract terms, except as to wages, were before the union negotiators and were well known to them, and no further contract proposal to accompany the wage offer was required. Wingate, as business representative of the union, advised Stephenson by letter dated January 10, 1958, that the membership of the union had rejected the respondent's wage offer. The letter submitted a contract which was substantially the same as had been tendered with the dead-line ultimatum made on behalf of the union on December 18, 1957, except as to the demand for a wage increase which was lowered from 25 cents per hour to 8½ cents per hour. In the letter it was twice said that it was a "last and final" offer, and its finality was stressed [fol. 863] by the statement that "unless this is acceptable to Florida Citrus Canners Coop we have no alternative but to take action as we deem necessary to bring the issues to a conclusion." A reply was requested but no meeting was sought.

On or about January 16, 1958, the respondent posted

to its employees a letter [1] over the signature of Stephenson, [fol. 864] in which the employees were advised that the union had rejected the wage increase, information was requested as to threats and intimidation, a report on the effects of the freezes was given, and an offer was made to furnish information or answer questions concerning the general situation. On January 17, 1958, the union called a strike. A little more than a third of the employees went out.

The respondent replaced 274 of the striking employees and notified them that they were discharged. Ten of the discharged strikers were given notice to vacate the company-owned dwellings they had been occupying. One of these, J. W. Montgomery, moved into a house at a rental described by him as "rather right smart higher" than he had been paying. An attorney employed by the

[1] "To Our Employees—

"The Teamsters Union has refused to agree to the Company putting into effect the wage increases proposed and posted which were intended to have been effective in the week ending January 26, 1958 together with back pay at the new rates being figured back to December 16, 1957, and distributed to each employee. This back pay alone estimated at over $10,000.00.

"We quote from a letter dated January 10, 1958 and signed by David F. Wingate, Business Representative, Local 173—

'With reference to our Contract and Wage negotiations, please be advised that the membership of Local 173 took official action on January 9, 1958 on the Wage Proposal submitted by you on January 4th. Your proposal was unanimously rejected.'

"The Company regrets that under these present circumstances the increases will not be made effective on the dates we proposed. We hope that every employee took advantage of the right given them under the law to voice their opinion and vote on this matter which seemed to me vitally important to each one. We hope, too, that every employee understands that Union membership is not a requirement to work or to vote on

union brought suit in the Florida Circuit Court to enjoin the eviction of the others and the action was pending and the nine discharged strikers were still in possession at the time of the hearing before the Examiner.

Soon after the strike was called the union sought another meeting, and the respondent agreed. The meeting was held on January 28th. Wingate, although present at this meeting, was replaced as the union spokesman by a representative of the Teamsters International Brotherhood. Some time was spent in acquainting the new negotiator with the prior negotiations. But progress was being made [fol. 865] and agreements were had on a number of questions when, after the respondent had declined to acquiesce in a union demand, the International representative accused the chief negotiator for the respondent, an attorney, of taking a particular position for the respondent in order

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such a question. Membership in a Union may only be required to vote on and engage in the internal affairs of a Union, as when electing officers, etc.

"The Company is concerned about reports and rumors of threats and intimidation being practiced by some of our employees on their fellow workers. This is illegal by law and contrary to Company rules. We invite anyone so threatened to inform us of the event and we will follow valid reports with disciplinary action.

"We are making every effort to obtain suitable fruit for all operations and pack as much as possible before the fruit becomes unusable or the remaining short supply runs out. Recently released official estimates by the U. S. Department of Agriculture of the fruit loss from freezing show that there are at least 22 million (22,000,000) boxes of oranges and 4 million (4,000,000) boxes of grapefruit less for industry to use. We agree with many others in the industry that the final loss figures will be much higher, especially so far as product processing is concerned.

"If we can be of any assistance in providing information or answering questions concerning the general situation, please feel free to contact me directly or through your foreman."

that he might make a fee. The attorney countered by saying that he had not, at least, taken the Fifth Amendment fifty-seven times before the McClellan Committee. The negotiator sent in by Teamsters International denied that that he had asserted his constitutional immunity fifty-seven times and stated that the correct number was fifty-four. This unfortunate incident, precipitated by the union, resulted in an atmosphere of tension and created another impasse. Further negotiations at this session were, of course, impossible and the meeting broke up. The respondent declined a request for a bargaining session that night. Bargaining was not thereafter resumed. Neither party thereafter attempted to reopen the bargaining until after it appeared that the union had lost its majority. The union representatives testified that respondent's representatives had said they would contact them. The testimony is not sufficiently explicit to sustain a refusal to bargain charge for failure of the respondent to contact the union for a resumption of bargaining. Cf. *N.L.R.B.* v. *Columbian Enameling & Stamping Co.*, 306 U.S. 292, 59 S. Ct. 501, 83 L. Ed. 660.

When the year had expired following the election which had resulted in the designation of the union as the bargaining representative of the employees, petitions were circulated by employees for the withdrawing of authorization [fol. 866] for representation by the union. The solicitations for signatures on the petitions were made, in part at least, during working hours. The petitions were signed by 76.2 percent of the employees. The petitions were delivered to the respondent on February 7, 1958. On February 17, the respondent advised the union that it had received the petitions and it was apparent that the union did not then represent a majority of the employees. On February 20, the respondent announced that the wage increase which it had previously offered, but which had been rejected by the union, would be put into effect. On February 24, the union requested a meeting. The respondent declined to meet unless the union was prepared to show that it then represented a majority.

On January 14, 1958, the union filed a charge against the respondent, the basis of which was that the respondent had refused to bargain on or about December 18, 1957, and

thereafter. An amended charge, filed on March 13, 1958, had as its basis a refusal to bargain on or about July 14, 1957, and thereafter, and that on January 19, 1958, and other dates, the respondent discharged employees because of membership in an activity on behalf of the union. A complaint followed, a hearing was had before the Board and its order was entered.

The intermediate report of the Examiner, which covers seventy-five pages of the Transcript of Record, was affirmed in all respects except one by the Board. 124 N.L.R.B. 1182. The exception is not here material. It was found [fol. 867] that respondent refused to bargain on and after December 18th, that the strike was caused by the refusal to bargain and that it was, from its inception, an unfair labor practice strike. These were the findings on issues referred to by the Examiner as the principal issues. The minor issues, as said by the Examiner, involved "a miscellany of alleged interference, restraint and coercion, and the alleged discrimination against certain tenant-strikers through efforts at eviction." These minor issues were also resolved against the respondent.

To a considerable extent the findings of the Examiner and the Board are dependent upon the acceptance of the testimony of Messrs. Wingate and Holly rather than the contradictory testimony of witnesses for the respondent. The Examiner believed Holly and where sharp conflicts appeared on crucial facts, he believed Wingate. On such issues the Examiner disbelieved the witnesses for the respondent. The attitude and approach of the Examiner are reflected in the statement made in the Intermediate Report with respect to John Roberts who had been the union's chief negotiator from the time that bargaining began in April until the end of August, 1957. The union's amended charge and the General Counsel's complaint asserted that the respondent had refused to bargain on and after July 14, 1957. From the Examiner's report we quote:

> "Because of a circumstance which was unfortunate to his case, the General Counsel was unable to present any evidence of value supporting his position concerning the April through August negotiations. That circumstance was the fact that Roberts left the Union

> [fol. 868] and went with the management of Minute Maid around the first of September. That alliance with the 'opposition' not only placed Roberts in such a position which the General Counsel apparently felt would jeopardize any reliance upon him as a witness, but it developed that Roberts' relations with his former associates were such that they made no attempt after his defection to review with him either the course of his negotiations or the results which he had obtained to date."

The words quoted above, it is to be noted, are the deliberately chosen expressions of an Examiner who had made findings, which we are asked to accept, as to whether the testimony of a union adherent or the conflicting testimony of an employer's executive is worthy of belief. Roberts, it is said, defected; in other words, he deserted his cause. He formed an alliance with the "opposition." Did he, by becoming an employee of Minute Maid, place himself in opposition to General Counsel? Was General Counsel justified in his apparent feeling that Roberts was unworthy of belief because he had become an employee of a fruit processor which was engaged in a controversy with the union? So it seems, and it seems that to the Examiner this is an unfortunate circumstance in that the witness whom General Counsel would have otherwise called has defected and is no longer employed by the union and would no longer tell the truth. The relations of Roberts with his former associates were such, so says the Examiner, that they made no attempt to review with him the course of his negotiations or the results obtained by him. The former associates, [fol. 869] we assume, were in the union. It is not suggested that those in the office of the General Counsel had developed any such relationship with Roberts that inquiry might not have been made by them as to what transpired while Roberts was acting for the union. After all, these proceedings were instituted by General Counsel and he has the burden of proving his complaint. The foregoing references to the Examiner's observations regarding Roberts are not made by reason of any direct bearing which they had upon the issues before the Examiner, the Board and this Court, but because they so clearly disclose the Ex-

aminer's views as to the determining of the credibility of witnesses. The Examiner's findings are not to be "given more weight than in reason and in the light of judicial experience they deserve." *Universal Camera Corporation* v. *N.L.R.B.*, 340 U. S. 474, 71 S. Ct. 456, 95 L. Ed. 456. This Court has heretofore found it necessary to question the inferences drawn and findings made where the Examiner has uniformly credited the evidence for the General Counsel and generally disbelieved the evidence for the employer. *N.L.R.B.* v. *Miami Coca-Cola Bottling Co.*, 5th Cir. 1955, 222 F. 2d 341. Cf. *N.L.R.B.* v. *Cosco Products Co.*, 5th Cir. 1960, 280 F. 2d 905. There is some testimony here which was introduced by General Counsel which the Examiner rejected, but in all material conflicts between the testimony of the General Counsel and that of the respondent, the credibility issues were resolved against the respondent. But there is, or so it seems to us, a more cogent reason for questioning the Examiner's credibility findings. The expressed view of the Examiner that where a person has defected from a union and formed an alliance with the [fol. 870] "opposition," that is to say, with an employer of labor, such person would be unable to give any "evidence of value" and that such "alliance" would "jeopardize any reliance upon him as a witness." We do not believe we have distorted the Examiner's meaning by taking his words out of context. We think it can fairly be inferred that the Examiner was of the belief that reliance may not be placed upon the testimony of a witness who is a part of the management of an employer in a controversy with a labor union. We think we are required to test the Examiner's credibility findings in the light of his theory of credibility as he has declared it.

The respondent had enjoyed a good relationship with the union which had previously represented its employees. Prior to the conversation between Holly and Stephenson on Christmas Day of 1957, the negotiations between the respondent and the Teamsters Union had been such as to indicate a cordial relationship. There had been delays but these, in substantially all instances, were occasioned by the union. There was no evidence of anything transpiring prior to the Holly-Stephenson conversation that would have indicated an anti-union animus on the part of the re-

spondent. The finding of an anti-union feeling is based almost entirely on the Holly testimony. All of the conduct of the respondent was viewed in the light of such finding. The Examiner's finding of a plan of the respondent not to bargain is dependent upon crediting Holly's testimony. Inferences drawn against the respondent were supported by the assumption that its conduct was motivated by hostility to the union. It might be said that Stephenson, as a [fol. 871] part of the respondent's management, was not a disinterested witness. But he was no more interested than Holly, who had gone on strike, had been replaced, and was hoping for reinstatement with back pay. Notwithstanding the absence of any prior anti-union animus or action of the respondent, and notwithstanding the improbability that the respondent's production manager would disclose its labor program and its plans for carrying out such program to a plant watchman, the Examiner believed Holly and disbelieved Stephenson. The Board adopted the Examiner's finding. Sound reason, in this case, requires us to decline to go with the Examiner in crediting Holly and discrediting Stephenson.

The Examiner made no express finding with respect to the credibility of Wingate. There were instances where the Examiner disbelieved or doubted the accuracy of Wingate's testimony. In respect to one instance the Examiner found "there are significant circumstances which prevent acceptance of Wingate's view . . ." In a case where the Examiner was in doubt as to whether the truth was reflected by the testimony of Stephenson or that of Wingate the Examiner commented that "The conflict, therefore, concerns no critical matter." In another instance, an inaccurate statement of Wingate was excused with the observation of the Examiner that "it reflected only ineptness or carelessness on Wingate's part." On crucial questions, dependent for their answers on whether Wingate or Stephenson should be believed, the Examiner resolved the questions against the respondent, thus showing an acceptance of Wingate's testimony and a rejection of that [fol. 872] of Stephenson. While the Examiner is not required to apply the maxim, Falsus in uno, falsus in omnibus, the testimony of a careless and inept witness, whose recollection of some matters cannot be accepted, and whose

statements are doubted with respect to issues which are not crucial, should, with respect to crucial questions, be more carefully scrutinized than has been done in this case.

It might have been courteous for the respondent to have complied with the Union's request for a reply to its January 10th letter but it was not, we think, under any duty to do so. The respondent, after negotiations were terminated on December 18th, was under a duty to resume bargaining, but only if so requested by the union. *American Federation of Grain Millers* v. *N.L.R.B.*, 5th Cir. 1952, 197 F. 2d 451. The letter of January 10th was not a request for the respondent to bargain, it was a "take-it-or-leave-it" demand with the "or else" threat incorporated. The attitude of the union that it was not willing to negotiate was implicit, if not fully expressed, in its letter. The failure of the respondent to reply to such a letter is not, we conclude, a refusal to bargain nor evidence of such a refusal.

We think it is clear that the respondent had not failed in its duty to bargain at the time of the strike. This being so, and the strikers having been replaced and discharged before requesting reinstatement, they are not entitled to reinstatement. *N.L.R.B.* v. *United States Cold Storage Corporation*, 5th Cir. 1953, 203 F. 2d 924, cert. den. 346 [fol. 873] U. S. 818, 74 S. Ct. 30, 98 L. Ed. 344; *American Federation of Grain Millers* v. *N.L.R.B.*, *supra*. It follows that the respondent is entitled to the possession of the company-owned houses from which certain of the striking employees refused to move.

Evidence was before the Board that foremen of the respondent had told striking employees that they would or might lose their jobs or seniority unless they returned to work. The Board finds that these threats, as they are referred to, were coercive and intimidating. Such would be true if the strike had been an unfair labor practice strike. Since it was not, and since the respondent had the right to replace and discharge those on strike, it was not an act of interference for representatives of the respondent to inform the strikers that it would or might do that which it had a right to do and subsequently did do.

As the Board points out, an employer is not relieved of its duty to bargain by reason of the loss by the union of

its majority if the loss is attributable to unfair labor practices of the employer. *N.L.R.B* v. *Lambert*, 5th Cir. 1954, 211 F. 2d 91. In urging that this principle is here applicable, the Board recites the posting of the notice of the union's rejection of the wage offer and the inclusion in the notice of the offer to provide information or answer questions, the permitting of the circulation during working hours of petitions for the withdrawal of union recognition, and, of course, refusal to bargain. The Examiner and the Board characterize the posted notice as "inviting wrath upon the Union" and as "an incentive to union defec- [fol. 874] tion." We cannot see in the offer to provide information or answer questions concerning the general situation the insidious implications which are so apparent to the Examiner and the Board. The offer follows a brief discussion of the situation relating to the freezes and would naturally relate to them. A reference to the general situation would not normally be regarded as having to do with a specific wage proposal. Permitting the soliciting during working hours of employee signatures on petitions for the withdrawal of union recognition does not seem to be an unfair labor practice. Cf. *N.L.R.B.* v. *United Steelworkers of America*, 357 U.S. 357, 78 S. Ct. 1268, 2 L. Ed. 2d 1383. We have discussed and will hereafter mention the contentions with respect to the charge that the respondent refused to bargain in good faith with the union. We have concluded that the determination by the Board that the loss of the union's majority was attributable to unfair labor practices of the respondent is not supported by substantial evidence on the record as a whole.

We are told by the Board that it is the settled rule of law that an existing certification must be honored until lawfully rescinded. The Board asserts that the respondent was under a duty to continue to deal with the union and to petition the Board for a new election. Such is the general rule approved in this Circuit. *N.L.R.B.* v. *Auto Ventshade, Inc.*, 5th Cir. 1960, 276 F. 2d 303. The general rule is not without exception. See *Texas Foundries* v. *N.L.R.B.*, 5th Cir. 1954, 211 F. 2d 791, where it is held that an employer was justified in advising a union that it had [fol. 875] lost its majority status during an unlawful strike.

See also *Brooks* v. *N.L.R.B.*, 348 U. S. 96, 75 S. Ct. 176, 99 L. Ed. 125, 42 A.L.R. 2d 1405; *N.L.R.B.* v. *Globe Automatic Sprinkler Co.*, 3rd Cir. 1952, 199 F. 2d 64. We are convinced that it was not intended by the Congress that employees should be required to accede to a representation which they have repudiated, in this case, by more than three-fourths of the bargaining unit. It might be said here, as this court has before said:

> "If we should compel respondent to bargain further with this union, which the employees themselves have obviously repudiated, the result would be to deny them the right, secured by the Act, to bargain through the representative of their choice." *N.L.R.B.* v. *Mayer*, 5th Cir. 1952, 196 F. 2d 286.

We do not think the rule requires an employer to bargain with a union which has demonstrably lost its majority and where the filing of a petition for decertification would be futile. *N.L.R.B.* v. *Sanson Hosiery Mills*, 5th Cir. 1952, 195 F. 2d 350, cert. den. 344 U. S. 863, 73 S. Ct. 103, 97 L. Ed. 669. At the time this matter was developing the Board was declining to process petitions for elections to determine whether a certified union continued to have a majority if, as was the case here, an unfair labor practice charge against the employer was pending before the Board. *N.L.R.B.* v. *Minute Maid Corporation*, *supra*. The Board here urges that the employer was required to petition for decertification. In Minute Maid, a nearly parallel case, occurring at about the same time, the Board sustained the [fol. 876] dismissal of such a petition. After the petitions repudiating the union were in the hands of the respondent, we think that, under the facts here shown, it was not required to indulge in a useless gesture of petitioning for a decertification. Neither was it required, and probably it should not have been permitted, to engage in further bargaining with the union.

The Board took the position that the granting of the pay raise on February 20 was an unfair labor practice. We have here a situation where the wage increase is not greater than was offered during collective bargaining, and where the union had lost its representation of the bargain-

ing unit. Under such circumstances the respondent owed no duty to the union which was breached by the granting of the pay increases. See *N.L.R.B.* v. *Crompton-Highland Mills*, 337 U. S. 217, 69 S. Ct. 960, 93 L. Ed. 1320, reh. den. 337 U. S. 950, 69 S. Ct. 1512, 93 L. Ed. 1752.

We have already discussed some of the questions which the Examiner refers to as "minor ones involving a miscellany of alleged interference, restraint, and coercion." The consideration of those not already discussed need not greatly extend this already overlong opinion. Most of these were of statements made by some of the respondent's supervisory employees to those who were engaged in the strike, and these have already been considered. Other statements attributed to foremen and other lower strata supervisory personnel are not to be condoned but are not enough, either taken separately or in conjunction with other [fol. 877] events, to form the basis for an unfair labor practice charge.

The charging union has filed a motion for leave to intervene. The motion is denied. *Haleston Drug Stores, Inc.* v. *N.L.R.B.*, 9th Cir. 1950, 190 F. 2d 1022; *Aluminum Ore Co.* v. *N.L.R.B.*, 7th Cir. 1942, 131 F. 2d 485, 147 A.L.R. 1.

The petition for enforcement will be

Denied.

[fol. 878] IN UNITED STATES COURT OF APPEALS

No. 18196

NATIONAL LABOR RELATIONS BOARD

versus

FLORIDA CITRUS CANNERS COOPERATIVE

JUDGMENT—March 27, 1961

This cause came on to be heard on the petition of the National Labor Relations Board for Enforcement of an Order of the National Labor Relations Board made on October 14, 1959, in the proceeding known upon the record of the Board as Cause No. 12-CA-307, and was argued by counsel;

On Consideration Whereof, It is now here ordered, adjudged and decreed that the petition for Enforcement in this case be, and the same is hereby denied.

[fol. 879] UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 18186

NATIONAL LABOR RELATIONS BOARD, Petitioner,

v.

FLORIDA CITRUS CANNERS COOPERATIVE, Respondent

DECREE—April 21, 1961

Before: Jones and Brown, Circuit Judges, and Carswell, District Judge

This Cause came on to be heard upon the petition of the National Labor Relations Board for the enforcement of a certain order issued by it against the aforesaid Respondent on October 14, 1959. The Court heard argument of respective counsel on October 12, 1960, and has considered the briefs and transcript of record filed in this cause. On March 27, 1961, the Court being fully advised in the premises, handed down its decision denying Board's petition for enforcement of its order.

On Consideration Whereof, it is ordered, adjudged and decreed by the United States Court of Appeals for the Fifth Circuit that enforcement of the said order of the National Labor Relations Board directed against Florida Citrus Canners Cooperative, its officers, representatives, agents, successors and assigns, be and it hereby is denied.

Entered April 21, 1961.

[fol. 880] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 881] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1961

No. 94

NATIONAL LABOR RELATIONS BOARD, Petitioner,

vs

FLORIDA CITRUS CANNERS COOPERATIVE

ORDER ALLOWING CERTIORARI—October 9, 1961

The petition herein for a writ of certiorari to the United States Court of Appeals for the Fifth Circuit is granted. The case is transferred to the summary calendar and set for argument immediately following No. 77.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

U. S. GOVERNMENT PRINTING OFFICE 1961 620811 666

Supreme Court, U.S.
FILED
MAY 27 1961
JAMES R. BROWNING, Clerk

No. — 94

In the Supreme Court of the United States

OCTOBER TERM, 1960

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

FLORIDA CITRUS CANNERS COOPERATIVE

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

ARCHIBALD COX,
Solicitor General,
Department of Justice,
Washington 25, D.C.

STUART ROTHMAN,
General Counsel,
DOMINICK L. MANOLI,
Associate General Counsel,
NORTON J. COME,
Assistant General Counsel,
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Washington 25, D.C.

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In the Supreme Court of the United States

OCTOBER TERM, 1960

No. —

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

FLORIDA CITRUS CANNERS COOPERATIVE

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

The Solicitor General, on behalf of the National Labor Relations Board, petitions for a writ of certiorari to review the judgment of the Court of Appeals for the Fifth Circuit entered in this case on March 27, 1961.

OPINIONS BELOW

The decision of the court of appeals (Appendix A, *infra*, pp. 15–33) is not yet reported. The findings of fact, conclusions of law and order of the Board (R. 66–135, 174–189) [1] are reported at 124 NLRB 1182.

JURISDICTION

The judgment of the court of appeals was entered on March 27, 1961 (*infra*, p. 34). The jurisdiction of

[1] "R." refers to the transcript of record; "B.A." refers to the appendix to the brief filed by the Board in the court of appeals.

this Court is invoked under 28 U.S.C. 1254(1) and Section 10(e) of the National Labor Relations Act, as amended, 29 U.S.C. 160(e).

QUESTION PRESENTED

Whether the court of appeals "grossly misapplied" the standard of review laid down in *Universal Camera Corporation* v. *National Labor Relations Board,* 340 U.S. 474, 491, 496, in reversing the Board's findings of fact because it disagreed with the Trial Examiner and the Board concerning the credibility of the witnesses.

STATUTE INVOLVED

The relevant provisions of the National Labor Relations Act, as amended (61 Stat. 136, 29 U.S.C. 151, *et seq.*) are as follows:

SEC. 10.

* * * * *

(e) The Board shall have power to petition any circuit court of appeals of the United States * * * within any circuit * * * wherein the unfair labor practice in question occurred or wherein such person resides or transacts business, for the enforcement of such order and for appropriate temporary relief or restraining order, and shall certify and file in the court a transcript of the entire record in the proceedings, including the pleadings and testimony upon which such order was entered and the findings and order of the Board. Upon such filing, the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to grant such temporary relief or

restraining order as it deems just and proper, and to make and enter upon the pleadings, testimony, and proceedings set forth in such transcript a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board. No objection that has not been urged before the Board, its member, agent, or agency, shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. The findings of the Board with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall be conclusive. * * *

STATEMENT

I. The Board's findings of fact

This case arose on a charge by the Union that the Company had refused to bargain. The facts are as follows:

Bargaining negotiations between the respondent and the Union certified by the Board began in April, 1957,[2] and were carried on for several months (R. 72–84; B.A. 170–212, 456–460, 491–511). On December 12 and 13, 1957, the Florida citrus belt suffered a severe freeze. At a bargaining session held December 18, Union negotiator Wingate asked for the Company's position on the Union's last contract proposal. The Company refused to discuss the proposal, but instead said that it wanted to talk about the freeze. Wingate accused the Company of stalling and

[2] The Union was certified on February 6, 1957 (R. 69).

threatened a strike. Thereupon, the Company ended the meeting. (R. 85–88; B.A. 212–217, 277–279, 416–419.)

One week later, on Christmas Day, Production Manager Stephenson, who had come to the plant to do some work, met employee J. E. Holly, who was acting as plant watchman (R. 90; B.A. 24–25). According to Holly, Stephenson asked Holly what he "felt was coming of the Union," and Holly replied that there were strike rumors and that he was disgusted. Holly further testified that Stephenson told him a strike would be foolish; that it would lead to a plant shutdown; or, if it did not, that a lot of good men might, in any case, lose their jobs (R. 90; B.A. 25). According to Holly, Stephenson suggested that they would all get along better if the men "kicked out" the Union (R. 90; B.A. 25), and that the Company might have to meet with the Union a time or two more; but after February 6, when the Union could be decertified, there would be no further negotiations because the Company did not intend to sign a contract with "a bunch of gangsters and crooks" (R. 92; B.A. 25–26). Holly further testified that Stephenson asked why Holly did not form a group of employees to express to the Company their dissatisfaction with the Union, and to begin decertification procedure. According to Holly, Stephenson said that the Company would make legal counsel available for this purpose "off the record" and that the Company would assist the employees in setting up an independent union (R. 91; B.A. 25). Finally, Holly testified that Stephenson promised that certain pay

raises which the Company would post on the bulletin board in the next few weeks would give the employees an incentive to get rid of the Union, and that, if the Union were no longer the employee representative, increased hospitalization benefits might be made available free of charge (R. 91; B.A. 25–26).

Stephenson's version of his conversation with Holly was vastly different, for, among other things, Stephenson denied proposing that Holly initiate decertification proceedings and denied telling Holly that no contract would be concluded with the Union (*infra*, p. 19; B.A. 475–478). The Trial Examiner believed Holly, who was "an impressive witness both on direct and cross-examination" and did not believe Stephenson who "reflected on cross-examination a demeanor and manner of reluctance in testifying which prevented acceptance of his testimony at face value" (R. 95). The Board adopted this credibility finding (R. 174).

Subsequent events confirmed Holly's testimony. On January 4, the Company submitted to the Union and at the same time posted on the bulletin board a detailed wage increase offer, which averaged 5½ cents an hour (R. 95–97). Upon receiving the wage offer, Union Representative Wingate called Stephenson to ask why no contract proposal had been submitted with it (R. 97; B.A. 217–218). Stephenson replied that the offer had intentionally been made in this way and that the Company had no accompanying contract proposal to make (R. 97, 99; B.A. 218).

On January 10, Wingate wrote to Stephenson reporting that on the preceding day the union membership had unanimously voted to reject the pay raise

unaccompanied by a contract proposal. The letter stated that "in a sincere effort" to bring the negotiations to a successful conclusion a "last and final" contract proposal was being included, and requested a prompt answer on whether or not it was acceptable (R. 99–100; B.A. 222, 358–359, 362–363, 366–370, 547–548).

Ignoring Wingate's request for an answer, the Company, on approximately January 16, posted a letter addressed "To Our Employees" (R. 100–101; B.A. 220). The letter set out that the Union had refused to agree to the wage increases and that, as a result, they would not go into effect as promised. The Company stated that union membership was not requisite to voting on acceptance of the increase, and expressed the hope that each employee would take advantage of his right to express an opinion and vote on this matter. It gave some information on the effect of the freeze and its relationship to the Company's business. The letter closed with an offer of assistance "in providing information or answering questions concerning the general situation" and urged the employees to "feel free to contact" Production Manager Stephenson either directly or through their foremen (B.A. 549–550).

Having received no reply to Wingate's letter to Stephenson after approximately a week, the Union called at strike for January 17 to protest the company's refusal to bargain (R. 102; B.A. 222–223). The Company replaced 274 of the strikers and notified each by letter that he was discharged (R. 125; B.A. 530–533, 562–566).

Although the Company's policy and practice were to prohibit solicitation for union membership during working time, the management permitted employees while on the job to circulate petitions withdrawing authorization from the Union and stating that the employees wished to accept the proposed wage increases (R. 105–112; B.A. 18, 381, 386). Employees were permitted, while checked in on the time clock, to solicit other working employees for signatures (R. 109, B.A. 66–68, 403–404); and a petition was circulated three times in some departments (R. 111; B.A. 144–146, 149). The petitions, when ultimately submitted to the Company, bore the signatures of 593 employees, 76.2 percent of the total working force (R. 111; B.A. 473–474).

On February 17, the Company notified the Union that, because of the petitions it had received from the employees, it was withdrawing its recognition of the Union. Although Wingate requested a further meeting, the Company adhered to its policy of nonrecognition (R. 112; B.A. 558–559, 560, 561). On February 20 the Company announced that it was putting into effect the pay raise rejected by the Union, retroactive to December 16; and on March 13 it announced an improved hospitalization plan (R. 112–113; B.A. 533–534, 535–537).

II. The Board's conclusions and order

Upon the foregoing facts, including the testimony of Holly which the trial examiner accepted as true, the Board found that, on and after December 18, 1956,

the respondent had not bargained in good faith with the Union, thereby violating Section 8(a)(5) of the Act (R. 115, 174). In the Board's view, "The entire evidence surrounding the events which followed the December 18 meeting showed that [the Company], exploiting the emergency created by the freeze, deliberately framed a course of conduct to avoid bargaining while it inspired, encouraged, and assisted a decertification movement" (R. 115). The Board further concluded that, as the subsequent strike was caused by this unfair labor practice, the respondent's discharge of the strikers violated Section 8(a) (3) and (1) (R. 115–116, 125–126, 174). So far as here relevant, the Board ordered the Company to cease and desist from the unfair labor practices, to bargain with the Union upon its request, and to reinstate the strikers with back pay (R. 177–180).

III. The decision of the Court below

The court of appeals, noting that "the findings of the Examiner and the Board are dependent upon the acceptance of the testimony of Messrs. Wingate and Holly rather than the contradictory testimony of witnesses for the respondent" (*infra*, p. 25), reversed the determinations of credibility on the ground that the Trial Examiner had proceeded on an improper basis in deciding which witnesses to believe. The court declared, as the basis for this conclusion, that "[t]he attitude and approach of the Examiner are reflected in the [following] statement made in the Intermediate Report with respect to John Roberts, who had been the Union's chief negotiator from the

time that bargaining began in April until the end of August 1957"[3] (*infra*, pp. 25–26, quoting R. 72–73):

> Because of a circumstance which was unfortunate to his case, the General Counsel was unable to present any evidence of value supporting his position concerning the April through August negotiations. That circumstance was the fact that Roberts left the Union and went with the management of Minute Maid around the first of September. That alliance with the "opposition" not only placed Roberts in such a position which the General Counsel apparently felt would jeopardize any reliance upon him as a witness, but it developed that Roberts' relations with his former associates were such that they made no attempt after his defection to review with him either the course of his negotiations or the results which he had obtained to date.

In the court's opinion, the Trial Examiner, by characterizing Roberts as one who had "defected" to the "opposition," had "clearly disclose[d]" his "views as to the determining of credibility of witnesses" (*infra*, p. 27). The court thought "it can fairly be inferred that the Examiner was of the belief that reliance may not be placed upon the testimony of a witness who is a part of the management of an employer in a controversy with a labor union." The court concluded that it was "required to test the Examiner's credibility findings in the light of his

[3] Since the unlawful conduct found by the Trial Examiner and the Board occurred on and after December 18, 1957 (R. 130), the court recognized that the events involving Roberts were themselves irrelevant (*infra*, pp. 26–27).

theory of credibility as he has declared it" (*infra*, p. 27). It proceeded to reverse his determinations, accepted Stephenson's version of the facts rather than Holly's or Wingate's, and set the Board's order aside for lack of evidentiary support (*infra*, pp. 28–33).

REASONS FOR GRANTING THE WRIT

This case, like *National Labor Relations Board* v. *Walton Manufacturing Co.*, No. 878, this Term, pending on petition for a writ of certiorari, is another instance in which the Court of Appeals for the Fifth Circuit has clearly exceeded its reviewing power under the Act and failed to apply the standard of review prescribed in *Universal Camera Corporation* v. *National Labor Relations Board*, 340 U.S. 474, 488, 491, 496. For the reasons set forth in our petition in No. 878, it is appropriate that review should also be granted here.

As shown in the Statement, the crucial question in this case is whether the break-off of negotiations on December 18, 1957, and the Company's subsequent reluctance to resume meeting with the Union were engendered by its efforts to assess the impact of the citrus freeze on its operations, or by a desire to stall until a year should have passed since the certification of the Union on February 6, 1957, when the Company should be free to contest the Union's right to represent the employees. The answer to this question turns primarily, as the court of appeals itself acknowledged (p. 25, *infra*), upon whether the Board should have accepted the testimony of Stephenson or the contrary testimony of Holly and Wingate.

Thus, Holly—whom the Trial Examiner and the Board believed, and whose testimony was borne out by the subsequent events—testified (pp. 4–5, *supra*) that Production Manager Stephenson told him that the Company did not intend to sign a contract with the Union; that it was just waiting for February 6 when it could formally terminate negotiations; that it would help the employees to initiate decertification proceedings; and that the employees would get wage increases as soon as the Union was eliminated.

Under established principles, the Trial Examiner's acceptance of Holly's and Wingate's testimony, resting as it did largely on an evaluation of their demeanor, was entitled to stand unless plainly unreasonable. *Universal Camera Corporation* v. *National Labor Relations Board,* 340 U.S. 474, 494–496; *National Labor Relations Board* v. *Dinion Coil Co.,* 201 F. 2d 484, 487–490 (C.A. 2); *National Labor Relations Board v. Howell Chevrolet Co.,* 204 F. 2d 79, 86 (C.A. 9), affirmed, 346 U.S. 482. The court below, instead of following this principle, seized upon a minor statement of the Trial Examiner in his Intermediate Report, misconstrued it, and then used it as a basis for overturning findings on credibility not otherwise vulnerable.[4]

[4] This is not the first time the court below has revealed a reluctance to accept findings on credibility which rest on the demeanor of the witness. See *National Labor Relations Board* v. *Cosco Products Co.*, 280 F. 2d 905, 909, where it applied what has been styled the "ancient fallacy" that uncontradicted testimony must be accepted as true. Cf. *National Labor Relations Board v. Howell Chevrolet Co.*, 204 F. 2d 79, 86 (C.A. 9), affirmed, 346 U.S. 482, quoting Judge Learned Hand in *Dyer* v. *MacDougall*, 201 F. 2d 265, 269 (C.A. 2).

Thus, the court set the Trial Examiner's determinations on credibility aside and made diametrically opposite findings—not because it found the testimony inherently improbable—but because it ascribed to the Trial Examiner a predisposition to disbelieve all managerial witnesses. Cf. *National Labor Relations Board* v. *Pittsburgh Steamship Co.*, 337 U.S. 656, 659–660. It found that predisposition revealed in the Trial Examiner's language in explaining why a certain witness—whose testimony would in any event have been irrelevant to the events forming the basis for the Board's unfair labor practice findings (n. 3, p. 9, *supra*)—was not called. The Examiner stated that Roberts, the Union's former chief negotiator, had left its employ and became allied with the management of another firm in the same industry. He added that this alliance with the "opposition" (quotation marks supplied by the Examiner, R. 72) placed Roberts in such a position that the General Counsel "apparently felt" it would jeopardize any reliance upon him as a witness, and "Roberts' relations with his former associates were such that they made no attempt after his defection to review with him either the course of his negotiations or the results which he had obtained to date" (p. 9, *supra*). Picking out the words "opposition" and "defection," the court concluded that it is "The *expressed* view of the Examiner that where a person has defected from a union and formed an alliance with the 'opposition,' that is to say, with an employer of labor, such person would be unable to give any 'evidence of value,' and that such 'alliance' would 'jeopardize any reliance upon him as a wit-

ness' " (*infra*, p. 27, emphasis added). Accordingly, and without referring to the Trial Examiner's express reliance on the demeanor of the witnesses, the court set aside the Trial Examiner's determinations on credibility and, in turn, the Board's order.

It is obvious that a fair reading of the Trial Examiner's statement would not warrant the court's interpretation. The Examiner was not characterizing Roberts as being in opposition to anyone but his former associates, as he was. Moreover, the Examiner was not saying that *he* would not have credited Roberts, but merely that the General Counsel feared Roberts would be hostile to his case and so did not call him. Finally, the Examiner's reference to Roberts' "defection" does not imply that Roberts deserved obloquy for having "deserted his cause" (p. 26, *infra*), but only that he appeared to "his former associates" as one who had deserted them.

Standing alone, this patent departure from accepted principles might not be sufficient to invoke this Court's supervisory powers. However, as shown in our petition for certiorari in *Walton*, No. 878, pp. 10–12, the case cannot be viewed in isolation (and see n. 4, p. 11, *supra*). The decision here, like that in No. 878, reflects a continuing misconception on the part of the court below as to its reviewing function. Accordingly here, as in No. 878, we think that corrective action by this Court is both appropriate and necessary.

CONCLUSION

For the reasons stated above, as well as in the petition in No. 878, this petition for a writ of certiorari should be granted.

Respectfully submitted.

ARCHIBALD COX,
Solicitor General.

STUART ROTHMAN,
General Counsel,
DOMINICK L. MANOLI,
Associate General Counsel,
NORTON J. COME,
Assistant General Counsel,
FREDERICK U. REEL,
Attorney,
National Labor Relations Board.

MAY, 1961.

APPENDIX

In the United States Court of Appeals for the Fifth Circuit

No. 18186

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

FLORIDA CITRUS CANNERS COOPERATIVE, RESPONDENT

PETITION FOR ENFORCEMENT OF AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD, SITTING AT WASHINGTON, D.C.

(March 27, 1961)

Before JONES and BROWN, *Circuit Judges,* and CARSWELL, *District Judge*

JONES, *Circuit Judge:* On February 6, 1957, as the result of an election held on January 29, 1957, an American Federation of Labor affiliate was displaced, as the bargaining representative of the respondent's employees at its Lake Wales, Florida, plant, by International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Citrus, Cannery, Food Processing and Allied Workers, Drivers, Warehousemen and Helpers, Local No. 173, which for the sake of brevity, will generally be referred to as the union. At the respondent's plant citrus fruit is processed into concentrate, single strength juice, and grapefruit sections.

The union delayed until April the making of any request for the commencement of bargaining. Several meetings were held between April and August.

Of these there is little in the record, although it appears that progress was made in the negotiations during this period. Meetings were held in August and one meeting was held on September 19th. Four sessions were held in October. Differences were disclosed in the respondent's desire for management prerogatives and no-strike clauses, and maintenance of standards, hot cargo, separability and savings clauses desired by the union. At the last of the October meetings the union agreed that the next move was up to it.

On December 4, M. A. Stephenson, the respondent's production manager, and David F. Wingate, the union's chief representative, had a "man to man" talk, each expressing his personal views and neither of them attempting to bind his committee. There is a wide divergence between the testimony of Stephenson and Wingate as to what transpired at this interview. The Examiner, apparently, did not wholly believe either, since he found, "The true posture of this private meeting lies somewhere between the respective claims." The Examiner rejected the view of Wingate "that about all that was left was to call the committee together to ratify" the results which he and Stephenson had reached. But the Examiner found that "the notes and the discussions indicated that an agreement was not only possible but near." Such an inference was at variance with the testimony of Stephenson. It is, we think, not particularly vital to determine whether the facts regarding this private and "off the record" meeting were as related by Wingate, or by Stephenson, or, as the Examiner found, "somewhere between the respective claims." It was nothing more than what it purported to be and no reference was made to it in the subsequent bargaining sessions.

The next meeting was scheduled for December 18th. The Examiner and the Board have found that on and after this date the respondent refused to bargain in good faith.

On the nights of December 12 and 13 disastrous freezes occurred in the Florida citrus belt. There was no way, so the Examiner found, by which the extent of the loss and the effect on the industry could be gauged at that time. M. H. Walker, General Manager of the respondent, had been informed that because of the freezes other Teamsters locals had agreed to the suspension of negotiations with other citrus processors in order for the latter to appraise their situations in view of the freezes. Walker came to the meeting of December 18th which commenced about two o'clock in the afternoon, intending to ask for a delay in negotiations. This intention was announced at the opening of the meeting. The chief union representative, David F. Wingate, refused to listen to any statement on behalf of the respondent and insisted on first stating his position. The chief union negotiator informed the respondent that the freezes were not a factor which would be considered in negotiations. He informed the respondent's representatives that the union's negotiating committee was authorized to call a strike whenever it saw fit. He gave the respondent a deadline of four o'clock that afternoon to agree upon a contract or give assurances that a contract would be agreed upon. A strike was the alternative tendered by the union if the respondent refused to meet the union's ultimatum. Confronted with the union's strike threat, the respondent's general manager made no request for a delay in negotiations. He said "The clear unmistakable implication of your remarks, Mr. Wingate, is that if we don't sign a contract with you by tonight you will

strike. This is a threat. I don't like threats, I don't respond under the pressure of threats, and I have nothing more to say." The meeting broke up. The union made no effort to prolong it.

The Examiner and the Board reached the conclusion that Walker should have made his plea for suspension of negotiations, but we see no reason why he should have done so in view of Wingate's declaration that, freezes or no freezes, the respondent must, within two hours, commit itself to a contract. The doing of a useless and futile thing is no more required in collective bargaining between an employer and a labor union than in other activities. The Examiner and the Board reached the conclusion that, notwithstanding the uncertain effects of the freezes, the unwillingness of the union to consider, or even hear a request for a delay until the effects of the freezes could be appraised, the refusal of the union to consider the freezes in bargaining, and notwithstanding the union's demand for a contract or a guarantee of one within two hours, the respondent should have attempted to bargain.

The Board has held in Adams Packing Association, Inc., 44 LLRM 1571, and this Court has held in *N.L.R.B.* v. *Minute Maid Corporation,* 283 F. 2d 705, that the freezes here involved justified the insistence by Florida citrus processors upon a postponement of bargaining on economic issues until the effect of the freezes could be appraised. The Examiner found that a reasonable postponement would have been in order. The Wingate ultimatum not only demanded a bargaining on these issues (if it can be said that bargaining rather than yielding to the union terms was intended), but the reaching or guaranteeing of an agreement within two hours. The refusal of the union representatives to consider a request for a delay be-

cause of the freezes, and we do not see how any other effect can be given to the Wingate statement, placed on the union, and upon it alone, the responsibility for creating an impasse and for the termination of the ineffective meeting of December 18th.

On Christmas Day, M. A. Stephenson, the respondent's production manager, was at the plant, which was not operating that day. Also at the plant was J. E. Holly, then acting as a watchman. Holly quoted Stephenson as saying that a strike would be foolish, that it might close the plant and good men might lose their jobs; that they would all get along better if the union was "kicked out;" that the Company might have to meet with the union again for a time or two but the Company did not intend to sign a contract with the union and there would be no more meetings with the union after February 6 when the union could be decertified. Holly quoted himself as saying he was disgusted with the talk of a strike and dissatisfied with the conduct of the negotiations by the union representatives. He quoted Stephenson as suggesting that Holly and other dissatisfied employees should attempt to form a group to begin decertification proceedings, and as offering to procure legal counsel for such a group. Holly related that Stephenson told him that, in a few days, a pay raise would be posted on the bulletin board which would give the employees an incentive to get rid of the union. Stephenson's version of the conversation was vastly different. He denied, among other things, proposing that Holly initiate decertification proceedings and denied telling Holly that no contract would be made with the union. Stephenson's statement about a proposed pay raise, as he related it, was made in response to Holly's inquiry and was that the respondent was considering making a proposal on

wages to the union. The Examiner credited the testimony of Holly and discredited the testimony of Stephenson. On the direct conflicts between the testimony of the two, the General Counsel's burden of proof, if sustained, is carried only by reason of the determination of the Examiner that Holly is to be believed and Stephenson is not. Holly is not shown to have taken any part in any effort to decertify the union. It is not shown that he either encouraged or discouraged adherence to the union. He related conversations with other employees who were opposed to the union but their opposition is not shown to have been inspired by or known to the respondent. Our unwillingness to rely upon the crediting of Holly by the Examiner and his discrediting of Stephenson is hereafter set forth.

On January 4, 1958, the respondent submitted to the union a proposal for a pay raise of 5½ cents per hour. A letter recited the difficulties resulting from the freezes and stated that the offer compared favorably with raises granted by other companies. Wingate, the principal negotiator for the union, inquired, so he testified, whether a contract proposal was to accompany the pay raise offer and was told, so he testified, that the Company was not submitting a new contract proposal. It was Stephenson's testimony that he told Wingate that respondent's contract terms, except as to wages, were before the union negotiators and were well known to them, and no further contract proposal to accompany the wage offer was required. Wingate, as business representative of the union, advised Stephenson by letter dated January 10, 1958, that the membership of the union had rejected the respondent's wage offer. The letter submitted a contract which was substantially the same as had been tendered with the dead-line ultimatum

made on behalf of the union on December 18, 1957, except as to the demand for a wage increase which was lowered from 25 cents per hour to 8½ cents per hour. In the letter it was twice said that it was a "last and final" offer, and its finality was stressed by the statement that "unless this is acceptable to Florida Citrus Canners Coop we have no alternative but to take action as we deem necessary to bring the issues to a conclusion." A reply was requested but no meeting was sought.

On or about January 16, 1958, the respondent posted to its employees a letter[1] over the signature

[1] "*To Our Employees*—

"The Teamsters Union has refused to agree to the Company putting into effect the wage increases proposed and posted which were intended to have been effective in the week ending January 26, 1958 together with back pay at the new rates being figured back to December 16, 1957, and distributed to each employee. This back pay alone estimated at over $10,000.00.

"We quote from a letter dated January 10, 1958 and signed by David F. Wingate, Business Representative, Local 173—

"'With reference to our Contract and Wage negotiations, please be advised that the membership of Local 173 took official action on January 9, 1958 on the Wage Proposal submitted by you on January 4th. Your proposal was unanimously rejected.'

"The Company regrets that under these present circumstances the increases will not be made effective on the dates we proposed. We hope that every employee took advantage of the right given them under the law to voice their opinion and vote on this matter which seemed to me vitally important to each one. We hope, too, that every employee understands that Union membership is not a requirement to work or to vote on such a question. Membership in a Union may only be required to vote on and engage in the internal affairs of a Union, as when electing officers, etc.

"The Company is concerned about reports and rumors of threats and intimidation being practiced by some of our employees on their fellow workers. This is illegal by law and contrary to Company rules. We invite anyone so threatened

of Stephenson, in which the employees were advised that the union had rejected the wage increase, information was requested as to threats and intimidation, a report on the effects of the freezes was given, and an offer was made to furnish information or answer questions concerning the general situation. On January 17, 1958, the union called a strike. A little more than a third of the employees went out.

The respondent replaced 274 of the striking employees and notified them that they were discharged. Ten of the discharged strikers were given notice to vacate the company-owned dwellings they had been occupying. One of these, J. W. Montgomery, moved into a house at a rental described by him as "rather right smart higher" than he had been paying. An attorney employed by the union brought suit in the Florida Circuit Court to enjoin the eviction of the others and the action was pending and the nine discharged strikers were still in possession at the time of the hearing before the Examiner.

Soon after the strike was called the union sought another meeting, and the respondent agreed. The meeting was held on January 28th. Wingate, al-

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to inform us of the event and we will follow valid reports with disciplinary action.

"We are making every effort to obtain suitable fruit for all operations and pack as much as possible before the fruit becomes unusable or the remaining short supply runs out. Recently released official estimates by the U.S. Department of Agriculture of the fruit loss from freezing show that there are at least 22 million (22,000,000) boxes of oranges and 4 million (4,000,000) boxes of grapefruit less for industry to use. We agree with many others in the industry that the final loss figures will be much higher, especially so far as product processing is concerned.

"If we can be of any assistance in providing information or answering questions concerning the general situation, please feel free to contact me directly or through your foreman."

though present at this meeting, was replaced as the union spokesman by a representative of the Teamsters International Brotherhood. Some time was spent in acquainting the new negotiator with the prior negotiations. But progress was being made and agreements were had on a number of questions when, after the respondent had declined to acquiesce in a union demand, the International representative accused the chief negotiator for the respondent, an attorney, of taking a particular position for the respondent in order that he might make a fee. The attorney countered by saying that he had not, at least, taken the Fifth Amendment fifty-seven times before the McClellan Committee. The negotiator sent in by Teamsters International denied that he had asserted his constitutional immunity fifty-seven times and stated that the correct number was fifty-four. This unfortunate incident, precipitated by the union, resulted in an atmosphere of tension and created another impasse. Further negotiations at this session were, of course, impossible and the meeting broke up. The respondent declined a request for a bargaining session that night. Bargaining was not thereafter resumed. Neither party thereafter attempted to reopen the bargaining until after it appeared that the union had lost its majority. The union representatives testified that respondent's representatives had said they would contact them. The testimony is not sufficiently explicit to sustain a refusal to bargain charge for failure of the respondent to contact the union for a resumption of bargaining. Cf. *N.L.R.B.* v. *Columbian Enameling & Stamping Co.*, 306 U.S. 292, 59 S. Ct. 501, 83 L. Ed. 660.

When the year had expired following the election which had resulted in the designation of the union as

the bargaining representative of the employees, petitions were circulated by employees for the withdrawing of authorization for representation by the union. The solicitations for signatures on the petitions were made, in part at least, during working hours. The petitions were signed by 76.2 percent of the employees. The petitions were delivered to the respondent on February 7, 1958. On February 17, the respondent advised the union that it had received the petitions and it was apparent that the union did not then represent a majority of the employees. On February 20, the respondent announced that the wage increase which it had previously offered, but which had been rejected by the union, would be put into effect. On February 24, the union requested a meeting. The respondent declined to meet unless the union was prepared to show that it then represented a majority.

On January 14, 1958, the union filed a charge against the respondent, the basis of which was that the respondent had refused to bargain on or about December 18, 1957, and thereafter. An amended charge, filed on March 13, 1958, had as its basis a refusal to bargain on or about July 14, 1957, and thereafter, and that on January 19, 1958, and other dates, the respondent discharged employees because of membership in an activity on behalf of the union. A complaint followed, a hearing was had before the Board and its order was entered.

The intermediate report of the Examiner, which covers seventy-five pages of the Transcript of Record, was affirmed in all respects except one by the Board. 124 N.L.R.B. 1182. The exception is not here material. It was found that respondent refused to bar gain on and after December 18th, that the strike was caused by the refusal to bargain and that it was, from

its inception, an unfair labor practice strike. These were the findings on issues referred to by the Examiner as the principal issues. The minor issues, as said by the Examiner, involved "a miscellany of alleged interference, restraint and coercion, and the alleged discrimination against certain tenant-strikers through efforts at eviction." These minor issues were also resolved against the respondent.

To a considerable extent the findings of the Examiner and the Board are dependent upon the acceptance of the testimony of Messrs. Wingate and Holly rather than the contradictory testimony of witnesses for the respondent. The Examiner believed Holly and where sharp conflicts appeared on crucial facts, he believed Wingate. On such issues the Examiner disbelieved the witnesses for the respondent. The attitude and approach of the Examiner are reflected in the statement made in the Intermediate Report with respect to John Roberts who had been the union's chief negotiator from the time that bargaining began in April until the end of August, 1957. The union's amended charge and the General Counsel's complaint asserted that the respondent had refused to bargain on and after July 14, 1957. From the Examiner's report we quote:

"Because of a circumstance which was unfortunate to his case, the General Counsel was unable to present any evidence of value supporting his position concerning the April through August negotiations. That circumstance was the fact that Roberts left the Union and went with the management of Minute Maid around the first of September. That alliance with the 'opposition' not only placed Roberts in such a position which the General Counsel apparently felt would jeopardize any reliance upon him as a witness, but it developed that Roberts' relations with his form-

er associates were such that they made no attempt after his defection to review with him either the course of his negotiations or the results which he had obtained to date."

The words quoted above, it is to be noted, are the deliberately chosen expressions of an Examiner who had made findings, which we are asked to accept, as to whether the testimony of a union adherent or the conflicting testimony of an employer's executive is worthy of belief. Roberts, it is said, defected; in other words, he deserted his cause. He formed an alliance with the "opposition." Did he, by becoming an employee of Minute Maid, place himself in opposition to General Counsel? Was General Counsel justified in his apparent feeling that Roberts was unworthy of belief because he had become an employee of a fruit processor which was engaged in a controversy with the union? So it seems, and it seems that to the Examiner this is an unfortunate circumstance in that the witness whom General Counsel would have otherwise called has defected and is no longer employed by the union and would no longer tell the truth. The relations of Roberts with his former associates were such, so says the Examiner, that they made no attempt to review with him the course of his negotiations or the results obtained by him. The former associates, we assume, were in the union. It is not suggested that those in the office of the General Counsel had developed any such relationship with Roberts that inquiry might not have been made by them as to what transpired while Roberts was acting for the union. After all, these proceedings were instituted by General Counsel and he has the burden of proving his complaint. The foregoing references to the Examiner's observations regarding Roberts are not made by reason of any direct bearing which they had upon the issues before the

Examiner, the Board and this Court, but because they so clearly disclose the Examiner's views as to the determining of the credibility of witnesses. The Examiner's findings are not to be "given more weight than in reason and in the light of judicial experience they deserve." *Universal Camera Corporation* v. *N.L.R.B.*, 340 U.S. 474, 71 S. Ct. 456, 95 L. Ed. 456. This Court has heretofore found it necessary to question the inferences drawn and findings made where the Examiner has uniformly credited the evidence for the General Counsel and generally disbelieved the evidence for the employer. *N.L.R.B.* v. *Miami Coca-Cola Bottling Co.*, 5th Cir. 1955, 222 F. 2d 341. Cf. *N.L.R.B.* v. *Cosco Products Co.*, 5th Cir. 1960, 280 F. 2d 905. There is some testimony here which was introduced by General Counsel which the Examiner rejected, but in all material conflicts between the testimony of the General Counsel and that of the respondent, the credibility issues were resolved against the respondent. But there is, or so it seems to us, a more cogent reason for questioning the Examiner's credibility findings. The expressed view of the Examiner that where a person has defected from a union and formed an alliance with the "opposition," that is to say, with an employer of labor, such person would be unable to give any "evidence of value" and that such "alliance" would "jeopardize any reliance upon him as a witness." We do not believe we have distorted the Examiner's meaning by taking his words out of context. We think it can fairly be inferred that the Examiner was of the belief that reliance may not be placed upon the testimony of a witness who is a part of the management of an employer in a controversy with a labor union. We think we are required to test the Examiner's credibility findings in the light of his theory of credibility as he has declared it.

The respondent had enjoyed a good relationship with the union which had previously represented its employees. Prior to the conversation between Holly and Stephenson on Christmas Day of 1957, the negotiations between the respondent and the Teamsters Union had been such as to indicate a cordial relationship. There had been delays but these, in substantially all instances, were occasioned by the union. There was no evidence of anything transpiring prior to the Holly-Stephenson conversation that would have indicated an anti-union animus on the part of the respondent. The finding of an anti-union feeling is based almost entirely on the Holly testimony. All of the conduct of the respondent was viewed in the light of such finding. The Examiner's finding of a plan of the respondent not to bargain is dependent upon crediting Holly's testimony. Inferences drawn against the respondent were supported by the assumption that its conduct was motivated by hostility to the union. It might be said that Stephenson, as a part of the respondent's management, was not a disinterested witness. But he was no more interested than Holly, who had gone on strike, had been replaced, and was hoping for reinstatement with back pay. Notwithstanding the absence of any prior anti-union animus or action of the respondent, and notwithstanding the improbability that the respondent's production manager would disclose its labor program and its plans for carrying out such program to a plant watchman, the Examiner believed Holly and disbelieved Stephenson. The Board adopted the Examiner's finding. Sound reason, in this case, requires us to decline to go with the Examiner in crediting Holly and discrediting Stephenson.

The Examiner made no express finding with respect to the credibility of Wingate. There were

instances where the Examiner disbelieved or doubted the accuracy of Wingate's testimony. In respect to one instance the Examiner found "there are significant circumstances which prevent acceptance of Wingate's view * * *." In a case where the Examiner was in doubt as to whether the truth was reflected by the testimony of Stephenson or that of Wingate the Examiner commented that "The conflict, therefore, concerns no critical matter." In another instance, an inaccurate statement of Wingate was excused with the observation of the Examiner that "it reflected only ineptness or carelessness on Wingate's part." On crucial questions, dependent for their answers on whether Wingate or Stephenson should be believed, the Examiner resolved the questions against the respondent, thus showing an acceptance of Wingate's testimony and a rejection of that of Stephenson. While the Examiner is not required to apply the maxim, Falsus in uno, falsus in omnibus, the testimony of a careless and inept witness, whose recollection of some matters cannot be accepted, and whose statements are doubted with respect to issues which are not crucial, should, with respect to crucial questions, be more carefully scrutinized than has been done in this case.

It might have been courteous for the respondent to have complied with the Union's request for a reply to its January 10th letter but it was not, we think, under any duty to do so. The respondent, after negotiations were terminated on December 18th, was under a duty to resume bargaining, but only if so requested by the union. *'American Federation of Grain Millers* v. *N.L.R.B.*, 5th Cir. 1952, 197 F. 2d 451. The letter of January 10th was not a request for the respondent to bargain, it was a "take-it-or-leave-it" demand with the "or else" threat incorporated. The

attitude of the union that it was not willing to negotiate was implicit, if not fully expressed, in its letter. The failure of the respondent to reply to such a letter is not, we conclude, a refusal to bargain nor evidence of such a refusal.

We think it is clear that the respondent had not failed in its duty to bargain at the time of the strike. This being so, and the strikers having been replaced and discharged before requesting reinstatement, they are not entitled to reinstatement. *N.L.R.B.* v. *United States Cold Storage Corporation,* 5th Cir. 1953, 203 F. 2d 924, cert. den., 346 U.S. 818, 74 S. Ct. 30, 98 L. Ed. 344; *American Federation of Grain Millers* v. *N.L.R.B., supra.* It follows that the respondent is entitled to the possession of the company-owned houses from which certain of the striking employees refused to move.

Evidence was before the Board that foremen of the respondent had told striking employees that they would or might lose their jobs or seniority unless they returned to work. The Board finds that these threats, as they are referred to, were coercive and intimidating. Such would be true if the strike had been an unfair labor practice strike. Since it was not, and since the respondent had the right to replace and discharge those on strike, it was not an act of interference for representatives of the respondent to inform the strikers that it would or might do that which it had a right to do and subsequently did so.

As the Board points out, an employer is not relieved of its duty to bargain by reason of the loss by the union of its majority if the loss is attributable to unfair labor practices of the employer. *N.L.R.B.* v. *Lambert,* 5th Cir. 1954, 211 F. 2d 91. In urging that this principle is here applicable, the Board recites the posting of the notice of the union's rejection of the

wage offer and the inclusion in the notice of the offer to provide information or answer questions, the permitting of the circulation during working hours of petitions for the withdrawal of union recognition, and, of course, refusal to bargain. The Examiner and the Board characterize the posted notice as "inviting wrath upon the Union" and as "an incentive to union defection." We cannot see in the offer to provide information or answer questions concerning the general situation the insidious implications which are so apparent to the Examiner and the Board. The offer follows a brief discussion of the situation relating to the freezes and would naturally relate to them. A reference to the general situation would not normally be regarded as having to do with a specific wage proposal. Permitting the soliciting during working hours of employee signatures on petitions for the withdrawal of union recognition does not seem to be an unfair labor practice. Cf. *N.L.R.B.* v. *United Steelworkers of America*, 357 U.S. 357, 78 S. Ct. 1268, 2 L. Ed. 2d 1383. We have discussed and will hereafter mention the contentions with respect to the charge that the respondent refused to bargain in good faith with the union. We have concluded that the determination by the Board that the loss of the union's majority was attributable to unfair labor practices of the respondent is not supported by substantial evidence on the record as a whole.

We are told by the Board that it is the settled rule of law that an existing certification must be honored until lawfully rescinded. The Board asserts that the respondent was under a duty to continue to deal with the union and to petition the Board for a new election. Such is the general rule approved in this Circuit. *N.L.R.B.* v. *Auto Ventshade, Inc.*, 5th Cir. 1960, 276 F. 2d 303. The general rule is not without exception.

See *Texas Foundries* v. *N.L.R.B.*, 5th Cir. 1954, 211 F. 2d 791, where it is held that an employer was justified in advising a union that it had lost its majority status during an unlawful strike. See also *Brooks* v. *N.L.R.B.*, 348 U.S. 96, 75 S. Ct. 176, 99 L. Ed. 125, 42 A.L.R. 2d 1405; *N.L.R.B.* v. *Globe Automatic Sprinkler Co.*, 3rd Cir. 1952, 199 F. 2d 64. We are convinced that it was not intended by the Congress that employees should be required to accede to a representation which they have repudiated, in this case, by more than three-fourths of the bargaining unit. It might be said here, as this court has before said:

> If we should compel respondent to bargain further with this union, which the employees themselves have obviously repudiated, the result would be to deny them the right, secured by the Act, to bargain through the representative of their choice. *N.L.R.B.* v. *Mayer*, 5th Cir. 1952, 196 F. 2d 286.

We do not think the rule requires an employer to bargain with a union which has demonstrably lost its majority and where the filing of a petition for decertification would be futile. *N.L.R.B.* v. *Sanson Hosiery Mills*, 5th Cir. 1952, 195 F. 2d 350, cert. den., 344 U.S. 863, 73 S. Ct. 103, 97 L. Ed. 669. At the time this matter was developing the Board was declining to process petitions for elections to determine whether a certified union continued to have a majority if, as was the case here, an unfair labor practice charge against the employer was pending before the Board. *N.L.R.B.* v. *Minute Maid Corporation, supra.* The Board here urges that the employer was required to petition for decertification. In Minute Maid, a nearly parallel case, occurring at about the same time, the Board sustained the dismissal of such a petition. After the petitions repudiating the union were in the hands of the respondent, we think that, under the

facts here shown, it was not required to indulge in a useless gesture of petitioning for a decertification. Neither was it required, and probably it should not have been permitted, to engage in further bargaining with the union.

The Board took the position that the granting of the pay raise on February 20 was an unfair labor practice. We have here a situation where the wage increase is not greater than was offered during collective bargaining, and where the union had lost its representation of the bargaining unit. Under such circumstances the respondent owed no duty to the union which was breached by the granting of the pay increases. See *N.L.R.B.* v. *Crompton-Highland Mills*, 337 U.S. 217, 69 S. Ct. 960, 93 L. Ed. 1320, reh. den., 337 U.S. 950, 69 S. Ct. 1512, 93 L. Ed. 1752.

We have already discussed some of the questions which the Examiner refers to as "minor ones involving a miscellany of alleged interference, restraint, and coercion." The consideration of those not already discussed need not greatly extend this already overlong opinion. Most of these were of statements made by some of the respondent's supervisory employees to those who were engaged in the strike, and these have already been considered. Other statements attributed to foremen and other lower strata supervisory personnel are not to be condoned but are not enough, either taken separately or in conjunction with other events, to form the basis for an unfair labor practice charge.

The charging union has filed a motion for leave to intervene. The motion is denied. *Haleston Drug Stores, Inc.* v. *N.L.R.B.*, 9th Cir. 1950, 190 F. 2d 1022; *Aluminum Ore Co.* v. *N.L.R.B.*, 7th Cir. 1942, 131 F. 2d 485, 147 A.L.R. 1.

The petition for enforcement will be

DENIED.

Judgment

Extract From the Minutes of March 27, 1961

No. 18186

NATIONAL LABOR RELATIONS BOARD

v.

FLORIDA CITRUS CANNERS COOPERATIVE

This cause came on to be heard on the Petition of the National Labor Relations Board for Enforcement of an Order of the National Labor Relations Board made on October 14, 1959, in the proceeding known upon the record of the Board as Cause No. 12–CA–307, and was argued by counsel;

On consideration whereof, it is now here ordered, adjudged and decreed that the petition for Enforcement in this case be, and the same is hereby denied.

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Office Supreme Court, U.S.
FILED
JUL 14 1961
JAMES R. BROWNING, Clerk

No. [redacted]94

In the Supreme Court of the United States

OCTOBER TERM, 1961

NATIONAL LABOR RELATIONS BOARD,

Petitioner,

versus

FLORIDA CITRUS CANNERS COOPERATIVE,

Respondent.

BRIEF OF RESPONDENT

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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In the Supreme Court of the United States

OCTOBER TERM, 1961

No. 972

NATIONAL LABOR RELATIONS BOARD,

Petitioner,

versus

FLORIDA CITRUS CANNERS COOPERATIVE,

Respondent.

BRIEF OF RESPONDENT

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

The Respondent files this Brief in opposition to the Solicitor General's Petition for a Writ of Certiorari to review the Judgment of the Court of Appeals for the Fifth Circuit entered in this case on March 27, 1961.

OPINION BELOW

The Decision of the Court of Appeals is reported at 288 F. 2d 630.

QUESTION PRESENTED

Under Section 10(e) of the National Labor Relations Act, as amended (61 Stat. 136, 29 U. S. C. 151, *et seq.*) are the United States Courts of Appeals precluded from setting aside credibility determinations of Trial Examiners?

STATUTE INVOLVED

The relevant provisions of the National Labor Relations Act, as amended, are as follows:

"Section 10.

"(e) The Board shall have power to petition any court of appeals of the United States * * * within any circuit * * * wherein the unfair labor practice in question occurred or wherein such person resides or transacts business, for the enforcement of such order and for appropriate temporary relief or restraining order, and shall certify and file in the court a transcript of the entire record in the proceedings, including the pleadings and testimony upon which such order was entered and the findings and order of the Board. Upon such filing, the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to grant such temporary relief or restraining order as it deems just and proper, and to make and enter upon the pleadings, testimony, and proceedings set forth in such transcript a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board. No objection that has not been urged before the Board, its member, agent, or agency, shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. The findings of the Board with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall be conclusive. * * *"

ARGUMENT

The Respondent contends that this Court should not grant a Writ of Certiorari to review the judgment of the Court of Appeals for the Fifth Circuit entered in this case.

Initially, the Petitioner in its Petition (p. 13) even admits that "Standing alone, this patent departure from accepted principles might not be sufficient to invoke this Court's supervisory powers." The Petitioner then argues that the instant case and another case (*N.L.R.B. v. Walton Manufacturing Co.*, No. 878, this Term, pending on Petition for a Writ of Certiorari) are so similar in their alleged errors below that this case should also be reviewed along with the *Walton* case.

Respondent submits that for writ purposes, each case must stand on its own feet, especially where there is no connection between the two cases compared. It is to be noted that in the *Walton* case, the Petitioner complains about the Fifth Circuit's methods of reviewing Section 8(a)(3) discrimination findings of the Board. And now in the instant case, the Petitioner complains about the Fifth Circuit's methods of reviewing cases wherein credibility determinations of the Trial Examiner and Board are set aside. The Petitioner fills the gap by stating "The decision here, like that in No. 878, reflects a continuing misconception on the part of the court below as to its reviewing function."

Respondent submits that the instant Petition should be denied if for no other reason than that the Petition is improper in its premise.

Respondent would further contend that no proper cause exists for this Court to grant the writ Petitioner seeks. In

the instant Petition (p. 2) the Petitioner states the question presented is:

> "Whether the court of appeals 'grossly misapplied' the standard of review laid down in *Universal Camera Corporation v. National Labor Relations Board*, 340 U. S. 474, 191, 196, in reversing the Board's findings of fact because it disagreed with the Trial Examiner and the Board concerning the credibility of the witnesses."

The quote "grossly misapplied", *supra*, is from the heart of the *Universal Camera* case where this Court through Mr. Justice Frankfurter (all justices concurring on this language) stated:

> "We conclude, therefore, the Administrative Procedure Act and the Taft-Hartley Act direct that courts must now assume more responsibility for the reasonableness and fairness of Labor Board decisions than some courts have shown in the past. Reviewing courts must be influenced by a feeling that they are not to abdicate the conventional judicial function. Congress has imposed on them responsibility for assuring that the Board keeps within reasonable grounds. That responsibility is not less real because it is limited to enforcing the requirement that evidence appear substantial when viewed, on the record as a whole, by courts invested with the authority and enjoying the prestige of the Courts of Appeals. The Board's findings are entitled to respect; but they must nonetheless be set aside when the record before a Court of Appeals clearly precludes the Board's decision from being justified by a fair estimate of the worth of the testimony of witnesses or its informed judgment on matters within its special competence or both.
>
> "From this it follows that enactment of these statutes does not require every court of appeals to alter its practice. Some — perhaps a majority — have always applied the attitude reflected in this legislation. To explore whether a particular court should or should not altar its practice would only divert attention from the

application of the standard now prescribed to a futile inquiry into the nature of the test formerly used by a particular court.

> "Our power to review the correctness of application of the present standard ought seldom to be called into action. Whether on the record as a whole there is substantial evidence to support agency findings is a question which Congress has placed in the keeping of the Courts of Appeals. *This Court will intervene only in what ought to be the rare instance when the standard appears to have been misapprehended or grossly misapplied.*" (Emphasis added) 340 U. S. at 490.

The Petitioner apparently feels that it is a violation of the *Universal Camera* standard for a Court of Appeals to set aside a credibility determination presented to it by the Trial Examiner and adopted by the Board. And yet, nowhere in its argument does the Petitioner point to any proscription in that decision or any other which excludes the area of credibility from the reviewing scope of the court below. The Petitioner seems to have construed the *Universal Camera* case as setting out the scope of review allowed to Courts of Appeals. If anything, it is submitted that that was what this Court specifically and judiciously avoided doing. Instead, a standard of review was expressed, which standard was previously enacted by the Congress in Section 10(e) of the Act. If it were the intent of Congress to exclude credibility determinations from the reviewing scope of the Courts of Appeals, surely Congress would have spoken or this Court would have judged such a denial in the *Universal Camera* case or in *N.L.R.B. v. Pittsburgh Steamship Co.*, 340 U. S. 498 (1951).

The next question is apparent: when are the findings of the Board with respect to questions of fact supported by substantial evidence on the record considered as a whole and when are such findings not so supported? The question is,

of course, paramount in every petition for the enforcement of a Board order the Petitioner brings to the Courts of Appeals.

The Respondent submits that the findings of the Board with respect to questions of fact are not supported by substantial evidence on the record considered as a whole when, "* * * although there is evidence to support [them], the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed." *United States v. U. S. Gypsum Company*, 333 U. S. 364, 395 (1947).

The Respondent asserts that the standard of review laid down in *Universal Camera* most assuredly gives the Courts of Appeals the right to set aside credibility determinations if it is of the definite and firm conviction that a mistake has been made. Indeed, if it did not, that Court would have in effect no power of review at all in a great number of cases where the Trial Examiner and Board credits all of the General Counsel's witnesses and none of respondent's. In the *Universal Camera* case, this Court in comparing the reviewing power of appellate courts under the National Labor Relations Act, with the reviewing power of a trial court sitting without a jury as to a master's findings pursuant to Rule 53(e)(2) of the Federal Rules of Civil Procedure, stated:

> "We are aware that to give the examiner's findings less finality than a master's and yet entitle them to consideration in striking the account, is to introduce another and an unruly factor into the judgmatical process of review. But we ought not to fashion an exclusionary rule merely to reduce the number of imponderables to be considered by reviewing courts." 340 U. S. at 493.

This Court therefore stated that appellate courts reviewing findings by Trial Examiners under the test "The findings of the Board with respect to questions of fact if supported by

substantial evidence on the record considered as a whole shall be conclusive", have broader authority to delve into the basis and evidence in support of the Examiner's findings than would a trial court sitting without a jury reviewing the findings of masters pursuant to the "clearly erroneous" rule set forth in Rule 53(e)(2) of the Federal Rules of Civil Procedure.

In *United States v. U. S. Gypsum Company, supra*, this Court in discussing the power of review of appellate courts in regard to findings made by a trial court sitting without a jury under the "clearly erroneous" test pursuant to Rule 52(a) of the Federal Rules of Civil Procedure, stated:

> "The practice in equity prior to the present Rules of Civil Procedure was that the findings of a trial court, when dependent upon oral testimony where the candor and credibility of witnesses would best be judged, had great weight with the appellate court. *The findings were never conclusive, however.* A finding is 'clearly erroneous' when although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm convicition that a mistake had been committed." (Emphasis added). 333 U. S. at 395.

That the court below was "left with the definite and firm conviction that a mistake [had] been committed" is patent from a reading of its opinion.

Respondent submits that there is little if any distinction between the "clearly erroneous" test set forth in Rule 52(a) and 53(e)(2). It would follow, *a fortiori*, that if reviewing courts have the power to set aside credibility determinations under the "clearly erroneous" rule, they must also have at least that power under the test "substantial evidence on the record considered as a whole" for the reason that this Court has stated that the power of review of appellate courts under the latter test is even broader than under the "clearly erroneous" test.

The Petitioner would have this Court believe that the Court of Appeals for the Fifth Circuit has absolutely no conception of its task in factually reviewing Labor Board cases brought to it for enforcement.

Indeed, this is not the case, for it is in this circuit that it has been stated:

> "We do not question the settled doctrine that the [Circuit] Court should not, *as a general proposition*, disturb the action of the Examiner and the Board in crediting or discrediting the testimony of a witness." (Emphasis added). *N.L.R.B. v. Walton Manufacturing Company*, 286 F. 2d 16, 22 (5th Cir. 1961).

* * *

> "Presented for our determination are questions as to whether substantial evidence supports the Board's findings. We are not called upon to resolve any novel questions of law. In many instances there is a sharp conflict between the testimony of an employee or former employee of the Newton Company and that of a representative of the company's management as to conversations had. The Trial Examiner has resolved these questions and, for the most part, the Board has followed the Examiner's findings. It is proper that we do likewise *in the absence of compelling reason*. That the Examiner has for the most part credited the testimony of employees and discredited that of management is not among the grounds that might justify our upsetting findings of fact in such situations." (Emphasis added). *N.L.R.B. v. Newton Company*, 236 F. 2d 438, 443 (5th Cir. 1956).

It is obvious from the record that the court below found a "compelling reason" to take the action it did in the instant

case. This is revealed from the following statements by the court below:

"The foregoing references to the Examiner's observations regarding Roberts are not made by reason of any direct bearing which they had upon the issues before the Examiner, the Board and this Court, but because they so clearly disclose the Examiner's views as to the determining of the credibility of witnesses. The Examiner's findings are not to be 'given more weight than in reason and in the light of judicial experience they deserve.' *Universal Camera Corporation v. N.L.R.B.*, * * *" 288 F. 2d at 636.

* * *

"The expressed view of the Examiner that where a person has defected from a union and formed an alliance with the 'opposition', that is to say, with an employer of labor, such person would be unable to give any 'evidence of value', and that such 'alliance' would 'jeopardize any reliance upon him as a witness'. We do not believe we have distorted the Examiner's meaning by taking his words out of context. We think it can fairly be inferred that the Examiner was of the belief that reliance may not be placed upon the testimony of a witness who is a part of the management of an employer in a controversy with a labor union. We think we are required to test the Examiner's credibility findings in the light of his theory of credibility as he had declared it." 288 F. 2d at 637.

* * *

"While the Examiner is not required to apply the maxim, Falsus in uno, falsus in omnibus, the testimony of a careless and inept witness, whose recollection of some matters cannot be accepted, and whose statements are doubted with respect to issues which are not crucial, should, with respect to crucial questions, be more carefully scrutinized than has been done in this case." 288 F. 2d at 638.

This Court seemingly answers the Petition desired in the instant case when it stated:

"Were we called upon to pass on the Board's conclusions in the first instance or to make an independent review of the review by the Court of Appeals, we might well support the Board's conclusion and reject that of the court below. But Congress has charged the Courts of Appeals and not this Court with the normal and primary responsibility for granting or denying enforcement of Labor Board orders. 'The jurisdiction of the court [of appeals] shall be exclusive and its judgment and decree shall be final, except that the same shall be subject to review . . . by the Supreme Court of the United States upon writ of certiorari . . . .' Taft-Hartley Act, § 10(e), 61 Stat. 148, 29 U. S. C. (Supp. III) § 160(e). Certiorari is granted only 'in cases involving principles the settlement of which is of importance to the public as distinguished from that of the parties, and in cases where there is a real and embarrassing conflict of opinion and authority between the circuit courts of appeal.' *Layne & Bowler Corp. v. Western Well Works*, 261 U. S. 387, 393; Revised Rules of the Supreme Court of the United States, Rule 38(5). The same considerations that should lead us to leave undisturbed, by denying certiorari, decisions of Courts of Appeals involving solely a fair assessment of a record on the issue of unsubstantiality, ought to lead us to do no more than decide that there was such a fair assessment when the case is here, as this is, on other legal issues.

"This is not the place to review a conflict of evidence nor to reverse a Court of Appeals because were we in its place we would find the record tilting one way rather than the other, though fair-minded judges could find it tilting either way. It is not for us to invite review by this Court of decisions turning solely on evaluation of testimony where on a conscientious consideration of the entire record a Court of Appeals under the new dispensation finds the Board's order unsubstantiated. In such situations we should 'adhere to the usual rule of noninterference where conclusions of Circuit Courts of Ap-

peals depend on appreciation of circumstances which admit of different interpretations.' *Federal Trade Comm'n v. American Tobacco Co.*, 274 U. S. 543, 544." *N.L.R.B. v. Pittsburgh Steamship Co.*, 340 U. S. 498, 502 (1951).

FACTS

In order to find out whether the Court of Appeals "grossly misapplied" the standard of review appropriate in such court, it is well to consider some of the testimony adduced at the trial of this cause.

The testimony in chief to prove the refusal to bargain charge was carried by a Board witness named Wingate. It has been held that the General Counsel must bear the burden of establishing the credibility of his witness by a preponderance of the evidence. *Casa Grande Cotton Oil Mill*, 110 NLRB 1834, 1852 (1954). If the credibility of a witness leaves the issues balanced in doubt, the Complaint should be dismissed. It should be kept in mind that Wingate, as the chief negotiator for the union, was always accompanied by a negotiating committee who were also present at the trial and testified about other matters. Wingate's testimony in regard to the bargaining was never supported by anyone else, even though Respondent at times produced as many as three witnesses to disprove Wingate's testimony. The Board has expressly held an inference of unfavorable testimony when corroborating witnesses are available and are not used in the trial. *Vogue-Wright Studios, Inc.*, 76 NLRB 773, 778 (1948).

Wingate was a contradictory, evasive and confused witness. The Board never made an appraisal of Wingate at all as a witness and it is therefore impossible to comprehend on what basis Wingate's testimony was credited. The Intermediate Report and Board Order conclusively show glowing

discrepancies in Wingate's testimony, yet no reason is advanced by the Trial Examiner nor the Board for accepting Wingate's testimony. *The Board* describes Wingate's conduct and testimony as "inept" and "careless" (R. 77), and at other times accepts the fact that Wingate's versions and incidents are untrue (R. 77). Consider also Wingate's version of the November 23 proposal to the Company. The Board merely stated that Wingate was confused about when he actually furnished this proposal, even though he was claiming that he had done so some two weeks before he actually had furnished the proposal and conceded on cross examination, as the Trial Examiner stated, that "he may have been in error testifying he had called Stephenson on November 15 about a meeting" (R. 80).

This testimony concerned crucial matters since it was charged that the Respondent had failed and refused to negotiate during this period even though requested by the union.

Continuing, let us take the next crucial incident testified to by Wingate involving the private meeting with company representative Stephenson. The Board stated that the meeting was "less complete and definitive than claimed by Wingate" (R. 81), yet Wingate's testimony about the meeting was credited. It has been held that the credibility resolutions of the Trial Examiner and the Board should be reversed where the Board's own finding shows the witness to be unreliable. *Williamson-Dickie Mfg. Co.*, 115 NLRB 356 (1956); *M & S Company, Inc.*, 108 NLRB 1193 (1954); *Standard Dry Wall Products, Inc.*, 91 NLRB 544 (1950).

The record does not disclose any evidence of anti union animus on the part of the Respondent except an isolated instance that concerned the testimony of Holly and Stephenson on December 25, just after the December 18 meeting.

The Board credits Holly *in toto* about incidents which the record showed could not be true. Holly testified that the employees would receive a retroactive wage increase and a certain cent per hour raise, alleging that this information was given to him by Stephenson on December 25. However, Mr. Walker, the General Manager of the Company, testified that it was his personal decision to give the increase and that the raises were not even considered and decided upon until the following January 4, when it was immediately transmitted to the union. Walker's testimony is unrefuted and uncontradicted, showing that it was impossible for Stephenson to have told Holly this on the Christmas Day previous. The Trial Examiner and the Board casually swept such facts under the rug and based their findings on selected fragmented parts of the evidence.

It is certainly within the purview of the Courts of Appeals to review testimony which shocks the conscience of that Court.

CONCLUSION

For the foregoing facts and reasons, the Petition for a Writ of Certiorari should be denied.

Respectfully submitted.

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No. 94

In the Supreme Court of the United States

OCTOBER TERM, 1961

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

FLORIDA CITRUS CANNERS COOPERATIVE

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

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In the Supreme Court of the United States

OCTOBER TERM, 1961

No. 94

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

FLORIDA CITRUS CANNERS COOPERATIVE

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

OPINIONS BELOW

The opinion of the court of appeals (III R. 78–93)[1] is reported at 288 F. 2d 630. The findings of fact, conclusions of law, and order of the Board (I R. 174–189, 66–144) are reported at 124 NLRB 1182.

JURISDICTION

The judgment of the court of appeals was entered on March 27, 1961 (III R. 94). The petition for a writ of certiorari was filed on May 17, 1961, and was granted on October 9, 1961 (III R. 96, 368 U.S. 812).

[1] The three volumes of the printed record will be separately referred to as "I, II, or III R."

The jurisdiction of this Court rests on 28 U.S.C. 1254 (1) and Section 10(e) of the National Labor Relations Act, as amended.

STATUTE INVOLVED

The relevant provisions of the National Labor Relations Act, as amended (61 Stat. 136, 29 U.S.C. 151, *et seq.*), are set forth in the Appendix, *infra*, pp. 33–35.

QUESTION PRESENTED

Whether the court of appeals "grossly misapplied" the standard of review laid down in *Universal Camera Corporation* v. *National Labor Relations Board*, 340 U.S. 474, 491, 496, in setting aside findings of the Trial Examiner and the Board concerning the credibility of the witnesses.[2]

STATEMENT

A. THE BOARD'S FINDINGS OF FACT AND THE SUPPORTING EVIDENCE

The Board found that respondent, a processor of citrus fruit in Florida, violated Section 8(a)(5) of the Act by refusing to bargain with the duly certified representative of its employees, Section 8(a)(3) by replacing and discharging 274 employees who struck in protest against the refusal to bargain and by evicting some strikers from company-owned houses, and Section 8(a)(1) by interrogating employees and seeking, through threats and promises of benefits, to in-

[2] A related question is presented in *National Labor Relations Board* v. *Walton Manufacturing Company*, No. 77, this Term.

duce them to abandon the Union. The facts supporting these findings may be summarized as follows:

1. *The negotiations up to December, 1957.*—In January 1957, the International Brotherhood of Teamsters, Local No. 173, hereinafter called the Union, won a Board-conducted election and was certified as the bargaining representative for respondent's employees (I R. 69). Negotiations opened in April and were carried on sporadically for several months (I R. 72–74; II R. 170–171). In September, the Union's chief negotiator, John Roberts, terminated his employment with the Union in order to join the management of another citrus fruit processing company in the area (I R. 72; II R. 170–171). Thereafter, David F. Wingate became the leader of the Union's bargaining team, and continued the negotiations (I R. 74; II R. 171). In general, the discussion centered upon contract proposals of each of the parties, and, in addition, upon the last contract which respondent had executed with an AFL local which had previously represented the employees (I R. 74–79).

On December 4, Wingate and Company Production Manager, M. A. Stephenson, had a private "off the record" and "man to man" meeting in order to set forth their respective positions (I R. 79–80). The meeting lasted about an hour and a quarter and closed with an agreement that a negotiating session should be arranged to discuss a new compromise proposal which Wingate had presented (I R. 80–83). Stephenson promised to arrange an acceptable date with the Company's counsel and to notify Wingate

when the Company would meet (I R. 83; II R. 209–210, 508–511).

Wingate called Stephenson twice in the next seven days to suggest a meeting and was informed that the Company was not yet ready (I R. 83; II R. 210, 511). On December 11, Wingate wired Stephenson proposing a meeting for the next morning; Stephenson proposed a December 18 meeting instead, and Wingate later confirmed it (I R. 83–84; II R. 542–544).

On December 12 and 13, the Florida citrus belt suffered a severe freeze (I R. 85). It was rumored that many citrus processing companies in the area had ceased contract negotiations until the economic effects of the freeze could be properly assessed (I R. 85–86; II R. 437–438).

2. *The meeting of December 18 and ensuing events.*—At the outset of the December 18 meeting, Wingate, anticipating that the Company would request an additional delay, asked for the Company's position on the Union's most recent proposal (I R. 86; II R. 213, 312–313). Company representatives refused to discuss the proposal, stating that they wished to talk about the freeze (I R. 86; II R. 213–214). Wingate insisted that the Union's proposal be discussed first, whereupon Company counsel Bowden said that there was no point in doing so since the proposal was so different from anything discussed or agreed upon in the past. Wingate asked Stephenson, who had been amenable to the proposal at the December 4 meeting, whether his view was the same as Bowden's. Stephenson replied in the affirmative

(I R. 86–87; II R. 214–215, 272–274, 313–314). Wingate then reviewed the course of negotiations and accused the Company of stalling. He concluded with the statement that strike authorization had been voted and that the Company had until 4:00 that afternoon to reach agreement on a contract or give reasonable assurances that one could be reached (I R. 87; II R. 215–216, 273, 279–280). Company representatives terminated the meeting, asserting that the Company would not respond to the pressure of threats and that it would be a good thing "to let the people strike and get it out of their system" (I R. 87–88, 114; II R. 216–217, 419). At no time did the Company representatives request suspension of the negotiations because of the freeze (I R. 87, 113–114; II R. 443).

Although the Union obtained neither a contract nor reasonable assurance of one within the time limit set, it did not resort to strike action until one month later (see *infra*, p. 9).

In the meantime, on Christmas Day, Stephenson, who had come down to the plant to do some work, met employee J. E. Holly, who was acting as plant watchman. Holly had worked for respondent some thirteen years, had served as chief shop steward for the displaced AFL local since 1948, and had also acted as its representative in certain arbitration matters. Although a member of the Teamsters, he held no official position (I R. 90; II R. 23–24).

According to Holly, Stephenson asked him what he "felt was coming of the Union," and Holly replied that there were strike rumors and that he was dis-

gusted. Holly further testified that Stephenson told him that a strike would be foolish; that it would lead to a plant shutdown; or, if it did not, that a lot of good men might, in any case, lose their jobs (I R. 90; II R. 25). According to Holly, Stephenson suggested that they would all get along better if the men "kicked out" the Union (I R. 90; II R. 25), that the Company might have to meet with the Union a time or two more, but that, after February 6, when the Union could be decertified, there would be no further negotiations because the Company did not intend to sign a contract with "a bunch of gangsters and crooks" (I R. 92; II R. 26).

Holly further testified that Stephenson asked why Holly did not form a group of employees to express to the Company their dissatisfaction with the Union and to begin decertification proceedings. According to Holly, Stephenson said that the Company would make legal counsel available for this purpose "off the record" and that the Company would assist the employees in setting up an independent union (I R. 91; II R. 25). Finally, Holly testified that Stephenson promised that certain pay raises, which the Company would post on the bulletin board in the next few weeks, would give the employees an incentive to get rid of the Union, and that, if the Union were no longer the employee representative, increased hospitalization benefits might be made available free of charge (I R. 90–91; II R. 25–26).

Stephenson's version of his conversation with Holly was vastly different, for, among other things, Stephen-

son denied proposing that Holly initiate decertification proceedings and denied telling Holly that no contract would be concluded with the Union (I R. 93–94; II R. 475–478). The Trial Examiner believed Holly, who was "an impressive witness both on direct and cross-examination," and did not believe Stephenson, who "reflected on cross-examination a demeanor and manner of reluctance in testifying which prevented acceptance of his testimony at face value" (I R. 95).[3] The Board adopted this finding on credibility (I R. 174–175).

On January 4, the Company submitted to the Union, and at the same time posted on the bulletin board, a detailed offer of a wage increase which averaged 5½ cents an hour (I R. 95–97). Upon receiving the offer, Union Representative Wingate called Stephenson to ask why no contract proposal had been submitted with it (I R. 97; II R. 217–218). Stephenson replied, according to Wingate's testimony, that the offer had been made in this way intentionally and that the Company had no accompanying contract proposal to make (I R. 97, 99; II R. 218). According to Stephenson's testimony, however, he replied that he intentionally withheld a contract, first, because the contract was

[3] The Examiner also gave these additional reasons for believing Holly (I R. 94–95): (1) Stephenson admitted holding the conversation and that it covered the subjects of a company union and the Company's contemplated wage offer; (2) Holly's long time employment and connection with the former union, coupled with his criticism of the Teamsters and his lack of a position with them, "marked him as promising material to lead a defection movement"; (3) Stephenson's promises and predictions, as testified to by Holly, were later fulfilled.

"another phase" of the negotiations and, second, because the Union knew the "full proposals" which the Company had already made (I R. 97; II R. 469). The Trial Examiner believed the Wingate version of the conversation. He noted that, not only did Stephenson admit that the failure was intentional, but that there was no full proposal agreeable to or presented by the Company on the table at that time, or, indeed, at any time since September 19, when, at its own suggestion, the Company had laid aside its original proposal and negotiated on the basis of the old AFL contract and various new Union proposals (I R. 97–98; II R. 469). In addition, the Trial Examiner pointed out in his discussion of the relative credibility of the witnesses that the "withholding of a contract proposal obviously fitted into [respondent's] plan to foment employee dissatisfaction, for Teamsters would thereby be prevented from claiming credit for having accomplished anything in the negotiations" (I R. 99). The Board adopted this resolution of the conflict (I R. 174–175).

On January 10, Wingate wrote to Stephenson and reported that on the preceding day the Union membership had unanimously voted to reject the pay raise unaccompanied by a contract. The letter stated that, "in a sincere effort" to bring the negotiations to a successful conclusion, a "last and final" contract proposal was being included, and requested a prompt answer as to its acceptability (I R. 99–100; II R. 222, 358–359, 362–363, 366–370, 547–548).

Ignoring Wingate's request for an answer, the Company, on approximately January 16, posted a letter

addressed "To Our Employees" (I R. 100–102; II R. 220–221) stating that, since the Union had refused to agree to the wage increases, the increases would not go into effect as promised. The Company further stated that Union membership was not a prerequisite for voting on acceptance of the increase, and expressed the hope that each employee would take advantage of his right to express an opinion and vote on this matter. The Company then gave some information on the effect of the freeze and its relationship to the Company's business, and closed the letter with an offer of assistance "in providing information or answering questions concerning the general situation"; it urged the employees to "feel free to contact" Production Manager Stephenson either directly or through their foremen (II R. 549–550).

The following day, having received no reply to Wingate's letter of January 10, the Union called a strike. It also continued efforts at further negotiations, starting with a telegram on January 18 in which Wingate advised Stephenson that the Union was ready to meet "at any time day or night" to settle the dispute (I R. 103; II R. 223–225, 551). After several wires, the Company finally set January 28 as the earliest time when it could be available for negotiations (I R. 103; II R. 552–556).

3. *The January 28 meeting, and respondent's contemporaneous anti-union activities.*—The meeting of January 28 began with an article by article review of the various pending proposals; some agreements were reached (I R. 103–104). An acrimonious exchange

between Union Negotiator Morgan and Company Counsel Bowden also occurred (I R. 105; II R. 322–341, 355–356). The Company broke off the meeting saying that there were operational problems at the plant which required attention. The Union urged a meeting that night, pointing to the progress which had been made in the negotiations that day. The Company, however, rejected this suggestion on the ground that Stephenson was needed at the plant and that the negotiations could not continue without him. The Union then requested a meeting the next day, but Bowden indicated that he had other plans. Finally, the Union asked whether it would be possible to set up a meeting at any future time. Bowden replied that it was not, and that the Union would have to wait until the Company specified a future date. The Union received no further word from the Company. (I R. 105; II R. 226, 342.)

Meanwhile, both before and after the strike, various Company officials were approaching employees in an effort to undermine their support of the Union. Before the strike, Superintendent Backus had advised employee Widner that if the Union were voted out, as had occurred at another local plant, the Company would give the employees a raise and everything would be all right (I R. 122; II R. 47–48). Foreman Hall suggested to employee Norris that those men who went on strike would probably lose their jobs, that the employees would probably get better pay if they did not strike, and that, in any event, without a Union there would be better pay (I R. 123; II R. 44–46). Fore-

man Milner queried a group of employees, including Gray and Batson, whether they intended to strike, cautioning Gray that if he did, he would be "hard timed" and might be fired (I R. 123; II R. 93–95, 159–160).

After the strike began, various employees were solicited by their foremen to return to work, while others received warnings that, if they did not return to work the next day, they would lose their jobs (I R. 116, 118; II R. 50–51, 90–92, 109–110, 111–1113, 162–163). Foreman Kelley told striker Brimlow that, if he returned to work, Kelley would provide him with other work when Brimlow's job was automated (I R. 118–119; II R. 152–153). Foreman Nolin told employee Jackson that he had the names of the strikers listed on a paper in Foreman Cannon's office and that he would hate to put Jackson's name on this list because "those boys would not be back" (I R. 121; II R. 97). When Foreman Rexford saw veteran employee Tadlock on the picket line, he expressed surprise and urged Tadlock to return to work (I R. 116–117; II R. 105). Rexford later visited Tadlock's house and, in Tadlock's absence, talked to his wife some 25 to 30 minutes, urging her to persuade her husband to return to work. Among other remarks, Rexford told Mrs. Tadlock that he wished to take care of her husband by seeing that he worked until retirement age and that the Company had "fixed it" before the strike so that the strikers could not win (I R. 117; II R. 106–107). Rexford reiterated the idea that the Company had "it fixed" in a similar conversation with striker Shuman (I R. 117; II R. 127).

Company management also encouraged the employees to seek decertification of the Union. Although prevailing Company policy and practice had not permitted solicitation of union membership during working hours (I R. 106–107; II R. 77, 386, 471–472), between January 22 and February 7, various employees were permitted, during working hours and on Company time, to circulate petitions which stated that the signing employees were withdrawing their authorization from the Union and that they wished to accept the proposed wage increases (I R. 105–106, 108–112; II R. 18, 66–69, 381, 403–404). The petitions were circulated as often as three times in some of the departments (I R. 111; II R. 144–146, 149). Indeed, on one occasion, Foreman Durrance complained to Superintendent Chelette that employee Connelly was spending too much time away from her job circulating one of the petitions. Chelette replied that Connelly had his permission to solicit for the signatures (I R. 110; II R. 75), and Connelly told Durrance that "they wanted her to stay over" that night and circulate a petition on the evening shift, too, in order to get it ready to be sent to the Labor Board by February 6 (II R. 76).[4] Durrance warned Foreman Jones, who was on the next shift, of the "jam" he had gotten into in the morning because of the petitions, but Jones replied that Superintendent Chelette had already called him in and told him "they would be around" with one of the petitions that night (I R. 110; II R. 77). At the end

[4] The end of the Union's certification year fell on February 6 (I R. 79).

of the drive, there were eight petitions bearing the signatures of 593 employees, or 76.2% of the total working force (I R. 111; II R. 473–474).

On February 17, the Company notified the Union that, because of the petitions it had received from the employees, it was withdrawing its recognition of the Union. Although Wingate requested a further meeting, the Company adhered to its policy of nonrecognition (I R. 112; II R. 558–559, 560, 561). On February 20, the Company announced that it was putting into effect the pay raise rejected by the Union, retroactive to December 16; on March 13, it announced an improved hospitalization plan (I R. 112–113; II R. 533–534, 535–537).

Meanwhile, the Company had replaced 274 of its striking employees, having notified each by letter that he was discharged (I R. 125; II R. 530–533, 562–566). The Company also served eviction notices on ten strikers who were tenants in Company-owned homes (I R. 126–127; II R. 166–167, 479–481).

B. THE BOARD'S CONCLUSIONS AND ORDER

Upon the foregoing evidence, including the testimony of Holly and Wingate which the Trial Examiner accepted as true, the Board found that, on and after December 18, 1956, the respondent had not bargained in good faith with the Union, and had thereby violated Section 8(a)(5) of the Act (I R. 115, 174–175). In the Board's view, "[t]he entire evidence surrounding the events which followed the December 18 meeting showed that [the Company], exploiting

the emergency created by the freeze, deliberately framed a course of conduct to avoid bargaining while it inspired, encouraged, and assisted a decertification movement" (I R. 115). The Board further concluded that, since the subsequent strike had been caused by this unfair labor practice, the respondent's discharge and replacement of the 274 strikers violated Section 8(a) (3) and (1); that the eviction of some strikers from Company homes was likewise discriminatory in violation of those sections; and that respondent, by the interrogation, threats, and promises of benefit of its supervisory officials, had independently violated Section 8(a)(1) of the Act (I R. 124–129, 175–176). The Board ordered the Company to cease and desist from the unfair labor practices, to bargain with the Union upon its request, and to reinstate the strikers with back pay (I R. 177–180).

C. THE DECISION OF THE COURT BELOW

The court of appeals declined to enforce any part of the Board's order. Concluding that "the findings of the Examiner and the Board [were] dependent upon the acceptance of the testimony of Messrs. Wingate and Holly rather than the contradictory testimony of witnesses for the respondent," the court reversed the Examiner's credibility resolutions on the ground that he had proceeded on an improper basis in deciding which witnesses to believe. The court declared that "[t]he attitude and approach of the Examiner are reflected in the [following] statement made in the Intermediate Report with respect to

John Roberts, who had been the Union's chief negotiator from the time that bargaining began in April until the end of August 1957" (III R. 86–87):[5]

> Because of a circumstance which was unfortunate to his case, the General Counsel was unable to present any evidence of value supporting his position concerning the April through August negotiations. That circumstance was the fact that Roberts left the Union and went with the management of Minute Maid around the first of September. That alliance with the "opposition" not only placed Roberts in such a position which the General Counsel apparently felt would jeopardize any reliance upon him as a witness, but it developed that Roberts' relations with his former associates were such that they made no attempt after his defection to review with him either the course of his negotiations or the results which he had obtained to date. [I R. 72–73.]

In the court's opinion, the Trial Examiner, by characterizing Roberts as one who had "defected" to the "opposition," had "clearly disclose[d]" his "views as to the determining of credibility of witnesses"; *i.e.*, it could "fairly be inferred that the Examiner was of the belief that reliance may not be placed upon the testimony of a witness who is a part of the management of an employer in a controversy with a labor union" (III R. 87–88). Testing "the Examiner's

[5] Since the unlawful conduct found by the Trial Examiner and the Board occurred on and after December 18, 1957 (I R. 113–116), the court itself recognized that the events involving Roberts were irrelevant (III R. 87).

credibility findings in the light of his theory of credibility as he has declared it" (III R. 88), the court proceeded, with respect to the Christmas Day conversation (see *supra*, pp. 5–7), to reverse the Examiner, accepting Stephenson's version of the facts rather than Holly's (III R. 88–89). Similarly, with respect to the conflicts in testimony between Stephenson and Wingate (see *supra*, pp. 7–8), the court, where the Examiner had credited Wingate, credited Stephenson (III R. 89–90).

The court concluded that there was no basis for the Board's finding that respondent had refused to bargain in good faith; that the strike was thus an economic rather than an unfair labor practice strike; and that the 274 replaced strikers were accordingly not entitled to reinstatement (III R. 90). Turning next to the Board's findings of an independent violation of Section 8(a)(1) of the Act, the court rejected them on various grounds. It concluded that the Company's permitting of the solicitation of January 22 to February 7 "does not seem to be an unfair labor practice" (III R. 91); that respondent's threats and promises of benefit to the strikers did not violate the Act since "it was not an act of interference for representatives of the respondent to inform the strikers that it would or might do that which it had a right to do and subsequently did so" (III R. 90); and that respondent's further threats and acts of interference were "not enough, either taken separately or in conjunction with other events, to form the basis for an unfair labor practice charge" (III R. 93).

SUMMARY OF ARGUMENT

It is well established that a resolution of credibility by the trier of fact, who alone has the real opportunity of appraising the witnesses, must be accepted by a reviewing court "unless on its face it is hopelessly incredible * * * or flatly contradicts either a so-called 'law of nature' or undisputed documentary testimony." *National Labor Relations Board* v. *Dinion Coil Co.*, 201 F. 2d 484, 490 (C.A. 2). Moreover, bias or partiality may not be attributed to a trier of fact merely because he has ruled uniformly for Board witnesses and against company witnesses, "[u]nless the credited evidence * * * carries its own death wound * * * and the discredited evidence * * * carries its own irrefutable truth." *National Labor Relations Board* v. *Robbins Tire & Rubber Co.*, 161 F. 2d 798, 800 (C.A. 5).

I

The action of the court below in setting aside the major portion of the Board's order is contrary to the settled principles governing the resolution of credibility. The key question in the present case is whether the break-off of negotiations on December 18, 1957, and the Company's subsequent reluctance to resume meeting with the Union, were engendered by its effort to assess the impact of the citrus freeze on its operations or by a desire to stall until February 6, 1958, when the Company would be free to contest the Union's right to represent the employees. As the court below acknowledged, the answer to this question

turns primarily upon whether the testimony of Production Manager Stephenson or the contrary testimony of employee Holly and Union agent Wingate is accepted. The Trial Examiner, whose resolution of this issue was affirmed by the Board, believed Holly and Wingate and disbelieved Stephenson. The Examiner's determination was based upon his observation of the demeanor of the respective witnesses, and upon other reasonable considerations which he detailed in his Intermediate Report. The court below, without specifically rejecting any of the considerations set forth by the Examiner, invalidated his determinations of credibility on the ground that he had applied a biased test in making them. The court's conclusions do not withstand analysis, being based, in large part, on a misreading or distortion of certain statements made by the Examiner in his Report, which were unrelated to the events immediately at issue. The court's action in setting aside the Examiner's findings was thus unwarranted and constituted an abuse of its reviewing function under Section 10(e) of the Act.

II

The court further erred in declining to sustain the Board's findings that respondent had engaged in independent violations of Section 8(a)(1) of the Act. The conduct in question constitutes a clear violation of the section. The reasons advanced by the court do not justify a contrary conclusion.

ARGUMENT

INTRODUCTION

In our petition for certiorari in this case, and in the petition for certiorari and the brief on the merits in the related case, *National Labor Relations Board* v. *Walton*, No. 77, this Term, we pointed out that the court below has frequently applied improper principles in reviewing Board orders, in reviewing the facts *de novo* and in substituting its judgment for that of the Board even though, on the record considered as a whole, the Board's findings were supported by substantial evidence. The *Walton* case involved a situation in which the evidence was susceptible of conflicting inferences, and the court upset the inferences drawn by the Board even though they were well warranted. In the present case, the court has made an even more basic incursion into the Board's fact-finding function, by setting aside a Board Trial Examiner's resolutions of credibility which were not plainly unreasonable.

The demeanor of a witness is an important element in determining whether his version of an incident is to be believed. Every court of appeals, including the court below, has recognized the "superior opportunity of the Examiner to observe the demeanor of the witnesses." *Motorola, Inc.* v. *National Labor Relations Board*, 199 F. 2d 82, 83 (C.A. 9), certiorari denied, 344 U.S. 913.[6] Accordingly, as Judge Frank

[6] See, *e.g.*, *National Labor Relations Board* v. *Lunder Shoe Corp.*, 211 F. 2d 284, 288 (C.A. 1), and cases cited; *National Labor Relations Board* v. *Jarka Corp.*, 198 F. 2d 618, 620

observed, the reviewing court "may not upset * * * the Examiner's evaluation of oral testimony * * * unless on its face it is hopelessly incredible * * * or flatly contradicts either a so-called 'law of nature' or undisputed documentary testimony." *National Labor Relations Board* v. *Dinion Coil Co.*, 201 F. 2d 484, 490 (C.A. 2). Any other rule "overlooks the significance of the carriage, behavior, bearing, manner and appearance of a witness—his demeanor—when his testimony is given orally in the presence of the trier of facts." *National Labor Relations Board* v. *Howell*

(C.A. 3); *Eastern Coal Corp.* v. *National Labor Relations Board*, 176 F. 2d 131, 133 (C.A. 4); *National Labor Relations Board* v. *Rock Hill Printing & Finishing Co.*, 131 F. 2d 171 (C.A. 4); *National Labor Relations Board* v. *American Thread Co.*, 204 F. 2d 169, 171 (C.A. 5); *National Labor Relations Board* v. *Truck Drivers & Helpers Local Union No. 728*, 228 F. 2d 791, 796–797 (C.A. 5); *United Fireworks Mfg. Co.* v. *National Labor Relations Board*, 252 F. 2d 428, 430 (C.A. 6); *National Labor Relations Board* v. *Ridge Tool Co.*, 151 F. 2d 947, 948 (C.A. 6); *Sunshine Biscuits, Inc.* v. *National Labor Relations Board*, 274 F. 2d 738, 741 (C.A. 7); *National Labor Relations Board* v. *Die & Tool Makers Lodge No. 113*, 231 F. 2d 298, 302 (C.A. 7), certiorari denied, 352 U.S. 833; *National Labor Relations Board* v. *Fisher Governor Co.*, 163 F. 2d 913, 914 (C.A. 8); *Paramount Cap Mfg. Co.* v. *National Labor Relations Board*, 260 F. 2d 109, 113 (C.A. 8); *National Labor Relations Board* v. *Scott & Scott*, 245 F. 2d 926, 929 (C.A. 9); *National Labor Relations Board* v. *Sun Co. of San Bern.*, 215 F. 2d 379, 381 (C.A. 9); *National Labor Relations Board* v. *Wemyss*, 212 F. 2d 465, 469 (C.A. 9); *National Labor Relations Board* v. *Tri-State Casualty Ins. Co.*, 188 F. 2d 50, 53 (C.A. 10); *National Labor Relations Board* v. *Oklahoma City Gen. Driv. Local 886*, 235 F. 2d 105, 107 (C.A. 10), and cases cited; *News Printing Co.* v. *National Labor Relations Board*, 231 F. 2d 767, 770 (C.A.D.C.); *Victor Products Corp.* v. *National Labor Relations Board*, 208 F. 2d 834, 838 (C.A.D.C.). See, also, *Dyer* v. *MacDougall*, 201 F. 2d 265, 269 (C.A. 2).

Chevrolet Co., 204 F. 2d 79, 86 (C.A. 9), affirmed, 346 U.S. 482.

Furthermore, no doubt should be cast upon the agency's resolution of issues of credibility by the fact that an Examiner may uniformly credit the Board's witnesses and equally uniformly reject the company's witnesses. In the often quoted[1] words of Judge Hutcheson in *National Labor Relations Board* v. *Robbins Tire & Rubber Co.*, 161 F. 2d 798, 800 (C.A. 5):

> The fact alone * * * of which Respondent makes so much, that Examiner and Board uniformly credited the Board's witnesses and as uniformly discredited those of the Respondent, though the Board's witnesses were few and the Respondent's witnesses were many, would not furnish a basis for a finding by us that such a bias or partiality existed and therefore the hearings were unfair. Unless the credited evidence * * * carries its own death wound, that is, is incredible and therefore, cannot in law be credited, and the discredited evidence * * * carries its own irrefutable truth, that is, is of such nature that it cannot in law be discredited, we cannot determine that to credit the one and discredit the other is an evidence of bias.

In applying these principles, "it will not do for courts to give lip-service to the 'expertise' of an administrative agency, and then scrutinize with a captious eye and weigh with an apothecary's scale every finding made by such an agency." *Foreman & Clark, Inc.* v. *National Labor Relations Board*, 215 F. 2d 396, 398 (C.A. 9), certiorari denied, 348 U.S. 887. But in

[1] See *National Labor Relations Board* v. *Pittsburgh S.S. Co.*, 337 U.S. 656, 659–660; *National Labor Relations Board* v. *Poultry Enterprises*, 207 F. 2d 522, 524 (C.A. 5).

the present case, the court below attempted to justify its weighing the Examiner's resolutions of credibility with an "apothecary's scale" by suggesting, in effect, that the Examiner was biased from the outset and that this bias tainted his findings. Not only did the court erroneously conclude that the Examiner applied a biased test in arriving at his credibility resolutions, but the court further erred by overlooking or unduly minimizing certain other conduct of the respondent which amounted to additional and independent violations of the Act.

I

THE COURT BELOW ERRED IN REJECTING THE TRIAL EXAMINER'S CAREFULLY DOCUMENTED RESOLUTIONS OF CREDIBILITY

The key question in this case is whether the breakoff of negotiations on December 18, 1957,[8] and the Company's subsequent reluctance to resume meeting with the Union, were engendered by its desire to assess the impact of the citrus freeze on its operations or by a decision to stall until February 6, 1958, when the Company would be free to contest the Union's right to represent the employees. As the court below itself acknowledged (III R. 86), the answer to this question turns primarily upon whether the Board should have accepted the testimony of Stephenson or the contrary testimony of Holly and Wingate.

1. Holly—whom the Trial Examiner and the Board believed, and whose testimony was borne out

[8] The Board found a refusal to bargain in good faith only on and after December 18, 1957 (I R. 113–116).

by the subsequent events—testified (see the Statement, *supra,* pp. 5–6) that, on Christmas Day, Production Manager Stephenson told him that the Company did not intend to sign a contract with the Union; that it was just waiting for February 6 when it could formally terminate negotiations; that it would help the employees initiate decertification proceedings; and that the employees would get wage increases as soon as the Union was eliminated. Wingate, who was also credited by the Examiner and the Board, testified (see the Statement, *supra,* p. 7) that, when he asked Stephenson why the Company, on January 4, 1958, had offered a wage increase without a contract proposal, Stephenson replied that the offer had "intentionally" been made that way because the Company had no contract proposal for the Union.

The Trial Examiner accepted Holly's version of his Christmas Day conversation with Stephenson because, in view of Holly's past position and present attitude toward the Union, it was likely that he would be singled out to lead a defection movement; because the events he forecasted in fact transpired; and because "Holly was an impressive witness both on direct and on cross-examination, while Stephenson, in comparison, sometimes reflected on cross-examination a demeanor and manner of reluctance in testifying which prevented acceptance of his testimony at face value" (see the Statement, *supra,* p. 7). Similarly, the Examiner accepted Wingate's version of his January conversation with Stephenson because Stephenson had conceded that

the wage offer was "intentionally" made without a contract proposal, and his explanation why this procedure was followed—*i.e.*, that the Company already had a contract proposal before the Union—was contrary to the facts; whereas Wingate's account—*i.e.*, that there was no contract proposal because the Company did not intend to make one to the Union—was consistent with the plan of undermining employee support for the Union, with respect to which Holly had previously testified (see the Statement, *supra*, pp. 7–8). These reasons for crediting the testimony of Holly and Wingate are rational; their testimony was not inherently improbable; and, in view of the Examiner's opportunity to take into account the demeanor of the witnesses, his resolution of the issue of credibility was well within the range of his authority. Under the principles governing the determination of credibility (see *supra*, pp. 19–21), the Examiner's acceptance of the Holly-Wingate testimony was entitled to stand.

2. Instead of following these principles, the court below seized upon a minor statement by the Examiner in his Intermediate Report, misconstrued it, and then used it as a basis for overturning his findings.

(*a*) The court set aside the Examiner's determination that the testimony of Holly and Wingate was credible, and made diametrically opposite findings, not because it found their testimony inherently improbable, but because it ascribed to the Examiner a predisposition to disbelieve all managerial witnesses. Cf. *National Labor Relations Board* v. *Pittsburgh*

S.S. Co., 337 U.S. 656. The predisposition was allegedly revealed in the Examiner's words explaining why a certain witness—whose testimony would in any event have been irrelevant to the events forming the basis for the Board's unfair labor practice findings (n. 5, *supra*, p. 15)—was not called. The Examiner stated that Roberts, the Union's former chief negotiator (see the Statement, *supra*, p. 3) had left its employ and became allied with the management of another firm in the same industry. He added that this alliance with the "opposition"[9] placed Roberts in such a position that the General Counsel apparently felt it would jeopardize any reliance upon him as a witness, and "Roberts' relations with his former associates were such that they made no attempt after his defection to review with him either the course of his negotiations or the results which he had obtained to date" (I R. 73). Picking out the words "opposition" and "defection," the court concluded that it is "[t]he *expressed* view of the Examiner that where a person has defected from a union and formed an alliance with the 'opposition,' that is to say, with an employer of labor, such person would be unable to give any 'evidence of value,' and that such 'alliance' would 'jeopardize any reliance upon him as a witness'" (III R. 88, emphasis added). Accordingly, and without referring to the Examiner's express reliance on the demeanor of Holly, the court set aside the Examiner's determinations on credibility and, in turn, the Board's order.

[9] Quotation marks supplied by the Examiner (see I R. 72).

A fair reading of the Trial Examiner's statement with respect to Roberts does not warrant the court's interpretation. The Examiner was not characterizing Roberts as being in opposition to anyone but his former associates, as he was in fact. Nor was the Examiner saying that *he* would not have credited Roberts, but merely that the General Counsel feared Roberts would be hostile to his case and therefore did not call him. Finally, the Examiner's reference to Roberts' "defection" does not imply that Roberts deserved obloquy for having "deserted his cause" (III R. 87), but only that he appeared to "his former associates" as one who had deserted them.[10]

(*b*) Nor is the court's action justified by the other circumstances which it cited as militating against the Examiner's findings on credibilty. Thus, the court

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[10] The statement in the Examiner's report apparently stemmed from the following colloquy between the Examiner and counsel for the General Counsel with reference to calling Roberts as a witness (pp. 1219–1220 of the original transcript of testimony, which has been filed with the Court):

TX: Of course, he is obviously in the territory.

GC: Yes sir, he is a labor relations director for Minute Maid.

TX: I understand that. The record shows that already.

GC: Yes sir.

TX: The Respondent could have called him.

GC: I submit they didn't call him.

TX: Either side could have called him so apparently—Well, of course, he was your negotiator at the time.

GC: Yes sir, but he has jumped on the other side of the fence.

TX: I understand, but that doesn't necessarily affect the force of an oath, does it?

GC: Sometimes I wonder. I will be glad to continue my legal theory if you like.

expressed incredulity over the fact that in the Christmas Day conversation "respondent's production manager would disclose its labor program and its plans for carrying out such program to a plant watchman" (III R. 89). As the Examiner pointed out (I R. 90, 94–95), however, Holly "had been employed by Respondent some 13 years, had served as chief shop steward for the old AFL union since 1948, and had also acted as its representative in certain arbitration matters." This experience, plus "his criticism of [the incumbent Union, the Teamsters], its representatives, and the negotiations obviously marked him as promising material to lead a defection movement."

(*c*) On no firmer footing is the court's conclusion (III R. 89–90) that Wingate's testimony was that "of a careless and inept witness whose recollection of some matters cannot be accepted and whose statements are doubted with respect to issues which are not crucial." At one point in his report, the Examiner had described Wingate's handling of a minor part of the negotiations in October as reflecting "only ineptness or carelessness" (I R. 77). This statement was not intended as a characterization of Wingate's credibility as a witness; nor would it have had much bearing on a conversation with Stephenson occurring three months later. To use this earlier incident as the basis for rejecting Wingate's later testimony is to ignore the circumstances, again carefully described by the Examiner (I R. 88–89, 97–99, 103–104), which corrobate Wingate's version of the January conversation with Stephenson. Although the court purported

not to require the Examiner "to apply the maxim, *Falsus in uno, falsus in omnibus*" (III R. 89), it applied that very maxim itself in rejecting Wingate's testimony and accepting Stephenson's.

3. The action of the court below in substituting its judgment respecting the credibility of witnesses for that of the Trial Examiner and the Board involved an abuse of its reviewing powers under the Act and was contrary to the uniform decisions of the courts of appeals on this subject (see *supra*, pp. 19–20). The court below ignored the early admonition of this Court, which was not altered by the *Universal Camera* decision, that the Board "has the function of appraising conflicting and circumstantial evidence, and the weight and credibility of testimony." *National Labor Relations Board* v. *Link-Belt Co.*, 311 U.S. 584, 597. Had the court heeded this admonition and permitted the Examiner's determinations of credibility to stand, it would have found ample evidence to support the Board's findings that the breakoff of negotiations on December 18, 1958, and the subsequent failure to reach an agreement with the Union was part of a plan to stall negotiations and undermine employee support for the Union, so that by February 6, 1958, when the Union's representative status could be questioned before the Board, the Union would be repudiated;[11]

[11] Even if, contrary to the foregoing, the December 18 meeting be not deemed the beginning of the respondent's refusal to bargain, there was certainly such a refusal at the end of the January 28 meeting. Thus, Union representatives Wingate and Morgan, whose testimony was credited by the Examiner and not contradicted by respondent's witnesses (I R. 105; II R. 226, 342), asserted that the January 28 meeting ended with the un-

and that therefore the respondent failed to bargain in good faith with the Union on and after December 18.

II

THE COURT BELOW FURTHER ERRED IN DECLINING TO SUSTAIN THE BOARD'S FINDINGS THAT RESPONDENT HAD ENGAGED IN INDEPENDENT VIOLATIONS OF SECTION 8(a)(1) OF THE ACT

1. The Board found, on the basis of Stephenson's testimony (II R. 471–472), that the Company's practices "*had not been * * * to permit the union to solicit other employees for union membership during working hours*" (emphasis supplied by the Examiner, I R. 107). The Board further found that, despite this practice of forbidding solicitation of "*union member-*

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derstanding that the Union would have to wait until the Company specified a future meeting date; the Company never contacted the Union. The court attempted to brush this fact aside on the ground (III R. 85) that the "testimony is not sufficiently explicit to sustain a refusal to bargain charge for failure of the respondent to contact the union for a resumption of bargaining." But, to so conclude, the court either had to ignore credited and uncontradicted testimony, or reweigh it; neither of these actions is permissible.

If the refusal to bargain dates from December 18, it is readily apparent that the strike, which occurred on January 14, could be viewed (as did the Board) as caused by that unfair labor practice, with the result that the strikers would be entitled to their jobs back even though they may have been replaced. The strikers would still have that right even if the refusal to bargain did not occur until January 28, for a strike which is economic at its inception may, by subsequent unfair labor practices, be converted into an unfair labor practice strike. See *Masiro Plastic Corp.* v. *National Labor Relations Board*, 350 U.S. 270, 278; *National Labor Relations Board* v. *Giustina Bros. Lumber Co.*, 253 F. 2d 371 (C.A. 9).

ship during working time, [the respondent] openly permitted, encouraged, and assisted the solicitation of *defections,* not only during the working time of the employees themselves, but during that of the solicitors" (emphasis supplied by the Examiner, I R. 112). The Board concluded (I R. 130–131) that this conduct violated Section 8(a)(1) of the Act.

The court rejected the Board's conclusion because (III R. 91) "[p]ermitting the soliciting during working hours of employee signatures on petitions for the withdrawal of union recognition does not seem to be an unfair labor practice." But clearly a company which forbids pro-union solicitation violates the Act if it permits anti-union solicitation. As the court below has observed on another occasion, "An otherwise valid no-solicitation rule * * * cannot be invoked or applied for a discriminatory anti-union purpose." *National Labor Relations Board* v. *Avondale Mills,* 242 F. 2d 669, 671 (C.A. 5), affirmed *sub nom. National Labor Relations Board* v. *Steelworkers,* 357 U.S. 357. See also *LeTourneau Co. of Georgia* v. *National Labor Relations Board,* 143 F. 2d 67, 68 (C.A. 5), reversed on other grounds, 324 U.S. 793.

Moreover, there was evidence that respondent assisted and actively encouraged the circulation of the petitions (see the Statement, *supra,* pp. 12–13). This evidence, which the court overlooked, would itself have been sufficient to support the Board's finding that respondent's conduct in respect to the petitions violated Section 8(a)(1) of the Act.

2. The court below also declined to sustain the Board's findings that respondent's innumerable

threats and promises of benefit (see the Statement, *supra*, pp. 8–9, 10–11) violated Section 8(a)(1) of the Act. The court stated that, "[s]ince [the strike] was not [an unfair labor practice strike] and since the respondent had the right to replace and discharge those on strike, it was not an act of interference for representatives of the respondent to inform the strikers that [the Company] would or might do that which it had a right to do" (III R. 90). But the conversations of respondent's foremen with the employees "necessarily involved more than * * * mere statement[s] of intent to lawfully replace economic strikers." *National Labor Relations Board* v. *Giustina Bros. Lumber Co.*, 253 F. 2d 371, 373 (C.A. 9).

The court further stated (III R. 93) that the "other statements attributed to foreman and other lower strata supervisory personnel are not to be condoned but are not enough, either taken separately or in conjunction with other events, to form the basis for an unfair labor practice charge." Seeking to buttress this conclusion, the court pointed out that the Examiner had characterized these events as "minor ones involving a miscellany of alleged interference, restraint, and coercion." Although the Examiner did characterize as "minor" these events—which are classic forms of restraint and coercion, in violation of Section 8(a)(1) of the Act—he did so only "in comparison" (I R. 70) with his other findings and conclusions, which involved even more flagrant anti-union conduct. In any event, the judgment whether conduct—otherwise violative of the Act—is important

enough to warrant issuance of a remedial order should be made by the Board and not the court. It "is for the Board, not the courts, to determine how the effect of * * * unfair labor practices may be expunged." *I.A.M.* v. *National Labor Relations Board,* 311 U.S. 72, 82; *Franks Bros. Co.* v. *National Labor Relations Board,* 321 U.S. 702, 704.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the judgment of the court below should be reversed and the case should be remanded to that court with directions to enter a decree enforcing the Board's order.

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JANUARY 1962.

APPENDIX

The relevant provisions of the National Labor Relations Act (61 Stat. 136, 29 U.S.C. 151, *et seq.*), in addition to those set forth in the Appendix to our brief in No. 77, this Term, are as follows:

> SEC. 8. (a) It shall be an unfair labor practice for an employer—
>
> * * * * *
>
> (5) to refuse to bargain collectively with the representatives of his employees, subt to the provisions of section 9(a).
>
> * * * * *
>
> (d) For the purposes of this section, to bargain collectively is the performance of the mutual obligation of the employer and the representative of the employees to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, or any question arising thereunder, and the execution of a written contract incorporating any agreement reached if requested by either party, but such obligation does not compel either party to agree to a proposal or require the making of a concession: *Provided*, That where there is in effect a collective-bargaining contract covering employees in an industry affecting commerce, the duty to bargain collectively shall also mean that no party to such contract shall terminate or modify such contract, unless the party desiring such termination or modification—
>
> (1) serves a written notice upon the other party to the contract of the proposed

termination or modification sixty days prior to the expiration date thereof, or in the event such contract contains no expiration date, sixty days prior to the time it is proposed to make such termination or modification;

(2) offers to meet and confer with the other party for the purpose of negotiating a new contract or a contract containing the proposed modifications;

(3) notifies the Federal Mediation and Conciliation Service within thirty days after such notice of the existence of a dispute, and simultaneously therewith notifies any State or Territorial agency established to mediate and conciliate disputes within the State or Territory where the dispute occurred, provided no agreement has been reached by that time; and

(4) continues in full force and effect, without resorting to strike or lock-out, all the terms and conditions of the existing contract for a period of sixty days after such notice is given or until the expiration date of such contract, whichever occurs later:

The duties imposed upon employers, employees, and labor organizations by paragraphs (2), (3), and (4) shall become inapplicable upon an intervening certification of the Board, under which the labor organization or individual, which is a party to the contract, has been superseded as or ceased to be the representative of the employees subject to the provisions of section 9(a), and the duties so imposed shall not be construed as requiring either party to discuss or agree to any modification of the terms and conditions contained in a contract for a fixed period, if such modification is to become effective before such terms and conditions can be reopened under the provisions of the contract. Any employee who engages in a

strike within the sixty-day period specified in this subsection shall lose his status as an employee of the employer engaged in the particular labor dispute, for the purposes of sections 8, 9, and 10 of this Act, as amended, but such loss of status for such employee shall terminate if and when he is reemployed by such employer.

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No. 94

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1961

NATIONAL LABOR RELATIONS BOARD,

Petitioner,

v.

FLORIDA CITRUS CANNERS COOPERATIVE,

Respondent.

BRIEF OF RESPONDENT

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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The opinion of the court below is reported at 288 F. 2d 630. The decision and order of the Petitioner and the Intermediate Report of the Trial Examiner are reported at 124 N.L.R.B. 1182.

STATEMENT OF CASE

Respondent's plant, where citrus friut is processed into concentrate, single strength juice, and grapefruit sections, is located at Lake Wales, Florida in the heart of the Florida citrus belt.

From 1947, to January 29, 1957, Respondent's production and maintenance employees had been represented by Citrus Workers Local Union No. 24217, affiliated with the American Federation of Labor, and a succession of collective bargaining contracts had been successfully negotiated between that union and Respondent without a strike. In an election held on January 29, 1957, however, the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Citrus, Canners, Food Processing and Allied Workers, Drivers, Warehousemen and Helpers, Local No. 173, hereinafter called the Teamsters or the union, received a majority of the votes cast, and on February 6, 1957, it was formally certified by the Petitioner. (I R. 69)[1].

Contemporaneously with the election at Respondent's plant and the certification of the union, the other Teamster locals within Joint Council 89 of the union had won elections at a number of other citrus plants in the area (Minute Maid at Auburndale, Florida, see 283 F. 2d 705; Adams Packing Association, Inc. at Auburndale, Florida, see III R. 37, 44 L.R.R.M. 1571; Stokely-Bordo at Haines City, Florida; Bordo Products Company at Winter Haven, Florida; and Lake Wales Citrus Growers at Lake Wales, Florida.) (I R. 70).

Union negotiator Wingate, an employee of Joint Council 89 of the union and a business agent of Locals

[1] The three volumes of the printed record will be separately referred to as "I R., II R., or III R."

173, 60, and 444, admitted that it was the Teamsters' aim to negotiate a common industry contract at all the citrus plants insofar as possible and to coordinate the bargaining activities of the union's negotiators. (I R. 70). The Trial Examiner stated:

> "It was apparent from the evidence as a whole that it was the Union's attempts at coordination which accounted to a considerable extent for some of the delays in negotiations and for its failure to press Respondent more vigorously for meetings. Certainly that was so at the outset, for Wingate admitted that the first meeting was not scheduled until April 16, [1957], more than 2 months after the certification, because the central bargaining committee was trying to prepare a single proposal which might be acceptable to all the plants. *As will be seen, there were later substantial delays at critical points in negotiations for which the union was responsible.*" (Emphasis added) (I R. 71).

Thus, the *union* delayed bargaining until April. Once bargaining commenced, however, considerable progress was made in several formal sessions held through August, 1957. Although the General Counsel's complaint alleged that Respondent's bad faith dated back to July 14, 1957, the Trial Examiner (the Petitioner adopted the Examiner's recommendations except for one point) concluded that there was no evidence of bad faith bargaining prior to the end of the October negotiations. (I R. 74, 113).

Several bargaining sessions were thus held between April and August, and one meeting was held on September 19, 1957, at which meeting Wingate took over for the union. (I R. 74). Prior to this time John Roberts was chief negotiator for the union; he left his

union job around the first of September and went with Minute Maid Corporation. (I R. 72). At the September 19th meeting Wingate stated that he agreed to prepare a new proposal (the union's original proposal, the Respondent's original counter-proposal and the old AFL contract were still on the table), although this would have to wait and the scheduling of the next session would have to be delayed because Wingate wanted to go to the Teamster's international convention in Miami. (I R. 73-75). Four sessions were held in October (after the convention) at which differences were disclosed in the Respondent's desire for management prerogatives and a no-strike clause, and the union's desire for a maintenance of standards, hot cargo, and separability and savings clauses. At the last of the October meetings (the 31st) the union agreed that the next move was up to it. (III R. 78). The Trial Examiner observed that during this period and after the October 31st meeting that the *union* was guilty of permitting lengthy delays in meeting and that Respondent's conduct did *not* establish that it was engaging in dilatory or stalling tactics. (I R. 78-79).

On December 4, 1957, M. A. Stephenson, Respondent's Production Manager, and Wingate, the union's chief representative, had a "man-to-man" talk, each expressing his personal views and neither attempting to bind his committee. (Compare the "over a cup of coffee" chat in the *Adams Packing* case. III R. 47). The court below stated accurately:

> "There is a wide divergence between the testimony of Stephenson and Wingate as to what transpired at this interview. The Examiner, apparently, did not wholly believe either, since he found, 'The true posture of this private meeting lies somewhere be-

tween the respective claims.' The Examiner rejected the view of Wingate 'that about all that was left was to call the committee together to ratify' the results which he and Stephenson had reached. But the Examiner found that 'the notes and the discussions indicated that an agreement was not only possible but near.' Such an inference was at variance with the testimony of Stephenson. It is, we think, not particularly vital to determine whether the facts regarding this private and 'off the record' meeting were as related by Wingate, or by Stephenson, or, as the Examiner found, 'somewhere between the respective claims.' It was nothing more than what it purported to be and no reference was made to it in the subsequent bargaining sessions." (III R. 79)

The union wired Stephenson on December 11, 1957, "renewing" its request for the next meeting and proposed the next day, December 12th. After receipt of the wire Stephenson on the same day (December 11) wired back that because of a conflict, Respondent's representatives could not meet the 12th and proposed instead December 18.

It was in this state of affairs—another negotiation meeting proposed for the 18th and the Respondent having been bargaining in good faith for some eight months—that a catastrophe occurred in the Florida citrus industry. On the nights of December 12 and 13, 1957, disastrous freezes occurred in the Florida citrus belt, exceeding in severity any which had occurred since December, 1934. (I R. 85). There was no way, so the Trial Examiner found, by which the extent of the loss and the effect on the industry could be gauged at that time. As the Examiner observed: "* * * the

freeze was obviously a factor which would tremendously affect Respondent's operations and which would necessarily influence any negotiations for a contract since, not only were wages and other cost items directly involved, but also question of hours and opportunities for employment generally. Though a shorter season was one result which could definitely be forecast, there would be peak periods and excessive work schedules during the emergency harvesting and processing periods." (I R. 85)

On December 13, Wingate confirmed Stephenson's wire of December 11, proposing December 18 as the next meeting date.

Marvin H. Walker, Respondent's General Manager, having read W. W. Teague's (chief union negotiator in the area) publicized (II R. 567) strike threat (which Teague denied making, II R. 412) on December 11, decided to attend the December 18 meeting to request the same consideration which the union had given other citrus companies because of the freezes, i. e., a suspension of negotiations pending appraisal of the weather catastrophe (I R. 85; III R. 50). Walker did come to the meeting, which commenced about two o'clock in the afternoon, intending to ask for a delay in negotiations (II R. 443). The intention of wanting to make a statement was announced at the opening of the meeting, but Wingate insisted on speaking before Walker (II R. 416; I R. 86-87; III R. 80).

Wingate then made a lengthy statement in which he reviewed the negotiations, accused the Respondent of engaging in stalling tactics, made his own personal appraisal of the freeze, stating the freezes were not a factor which would be considered in negotiations. He concluded by stating that the union's negotiating com-

mittee was authorized to call a strike whenever it saw fit; and *then he gave Respondent a deadline of four o'clock that afternoon to reach a contract or give assurances that a contract would be reached* (I R. 87; II R. 417; III R. 80). A strike was the alternative tendered by the union if Respondent refused to meet the union's ultimatum (I R. 87; III R. 80). Confronted with the union's strike threat, Respondent's Walker made no request for a delay in negotiations. He said "The clear, unmistakable implication of your remarks, Mr. Wingate, is that if we don't sign a contract with you by tonight you will strike. That is a threat. I don't like threats, I don't respond under the pressure of threats, and I have nothing more to say." (II R. 419). The union made no effort to prolong the meeting which then broke up, and the union did not attempt to setup another meeting (III R. 80; II R. 419).

On the basis of this record, Trial Examiner George A. Downing and the Petitioner found that on and after this date (December 18) Respondent violated Section 8 (a) (5) of the National Labor Relations Act, as amended (61 Stat. 136, 29 U.S.C. 151 *et seq.*) hereinafter called the Act, by refusing to bargain in good faith (I R. 130). Indeed, the Trial Examiner and the Petitioner reached the conclusion that on December 18, 1957, Walker was "*required*" to make his plea for suspension of negotiations, notwithstanding the union's most unreasonable position. (Emphasis the Trial Examiner's) (I R. 89). The court below thought very much differently by stating " * * * we see no reason why he [Walker] should have done so [made a plea] in view of Wingate's declaration that, freezes or no freezes, the respondent must, within two hours, commit itself to a contract. The doing of a useless and

futile thing is no more required in collective bargaining between an employer and a labor union than in other activities. The Examiner and the Board reached the conclusion that, notwithstanding the uncertain effects of the freezes, the unwillingness of the union to consider, or even hear a request for a delay until the effects of the freezes could be appraised, the refusal of the union to consider the freezes in bargaining, and notwithstanding the union's demand for a contract or a guarantee of one within two hours, the respondent should have attempted to bargain." (III R. 80).

* * *

On Christmas Day, M. A. Stephenson, Respondent's Production Manager, was at the plant, which was not operating that day. Also, at the plant was J. E. Holly, a Teamsters member and long-time union adherant, then acting as a watchman for Respondent. On testifying, Holly quoted Stephenson as saying to him that a strike would be foolish; that it might close the plant and good men might lose their jobs; that they would all get along better if the union was "kicked out;" that the Respondent might have to meet with the union again for a time or two, but the Respondent did not intend to sign a contract with the union after February 6, 1958, when the union could be de-certified or, in the words of Holly: "* * * after February 6, which was *our* date when *we* could be de-certified * * *." (Emphasis added) (I R. 92). Holly quoted himself as saying he was disgusted and dissatisfied with the conduct of the negotiations and that there were rumors of a strike. He quoted Stephenson as suggesting that Holly and other dissatisfied employees should attempt to form a group to begin de-certification proceedings, and that they "would need legal counsel in such a matter,

but that that could be arranged offhand, off the record." Holly further testified that Stephenson told him that a pay raise would be posted on the bulletin board around the middle of January, which raise would give the employees an incentive to get rid of the union and would be retroactive to December 16th. (I R. 90).

Stephenson's version of this amazing conversation was quite different. He denied the matters of significance which Holly had testified to, such as proposing that Holly initiate de-certification proceedings and telling Holly that no contract would be made with the union. Stephenson's statement about a proposed pay raise, as he related it, was made in response to Holly's inquiry and was that Respondent was considering making a proposal on wages to the union (II R. 475-478; III R. 81). Stephenson also testified that on Christmas Day, no details of the wage proposal had been worked out as to the time of the proposal and as to the other features. The Trial Examiner credited the testimony of Holly concerning this conversation, giving various reasons for so doing, which are discussed under the Argument, *infra*. The court below concluded that "*Sound reason, in this case, requires* us to decline to go with the Examiner in crediting Holly and discrediting Stephenson." (Emphasis added) (III R. 89).

* * *

On January 4, 1958, Respondent submitted to the union a proposal for a pay raise of 5½ cents per hour. A letter recited the difficulties resulting from the freezes and stated that the offer compared favorably with raises granted by other companies (II R. 545; I R. 97). Wingate, the union's negotiator, testified that he called Stephenson after receiving the proposal and inquired whether a contract proposal was to accompany

the pay raise offer and was told, so he testified, by Stephenson " * * * we have no contract to offer." (II R. 218). Wingate testified he told Stephenson he would present the offer to the members. Wingate did not suggest another meeting at this time.

Stephenson's version was that he told Wingate that Respondent had not forgotten to send a contract, that the contract was another phase of it, and Wingate was familiar with all of the Respondent's proposals, which were before the union, except as to wages, and no further contract proposal to accompany the wage offer was required (III R. 82; II R. 469).

At the hearing the Trial Examiner inquired of Stephenson relative to this telephone call which *Wingate* had initiated:

"THE EXAMINER:

Did he [Wingate] ask for a meeting to discuss it?

"THE WITNESS:

No, sir.

Q Did he tell you at that time that he was going to present it to the membership?

A Yes.

Q Did you ever tell Mr. Wingate that that proposal on wages was made on the basis of No Contract?

A Oh, no." (II R. 469-470).

It is interesting to note that in his Intermediate Report the Trial Examiner took the following tact:

"*Stephenson* did not, however, offer to resume negotiations or state that Respondent was ready to do so.

"The circumstances which are of chief significance in evaluating the foregoing testimony [of Wingate and Stephenson relative to the telephone call] are Stephenson's admissions, in the light of

> the Company's breakoff at the December [18] meeting, that the failure to submit a contract was intentional *and his failure to indicate willingness to resume negotiations* * * *" (Emphasis added) (I R. 97).

Suffice it to say that the record does not show that Stephenson indicated his *unwillingness* to resume negotiations and the burden was not on Respondent to suggest the resumption, notwithstanding the Trial Examiner's opinion to the contrary. At any rate, the Trial Examiner found that Stephenson informed Wingate that Respondent had no contract proposal to submit with its wage offer, thus crediting the testimony of Wingate (I R. 99). The court below, in not expressly rejecting the finding of the Trial Examiner in this instance, noted that the "Examiner made no express finding with respect to the credibility of Wingate." (III R. 89). The court further noted that the Trial Examiner should have more carefully scrutinized Wingate's testimony in the light of other conflicts or inconsistencies in his testimony. (III R. 89).

* * *

Wingate wrote Stephenson a letter (II R. 547) on January 10, 1958, reporting that the membership of the union "unanimously rejected" Respondent's January 4 "*Wage Proposal*," as Wingate characterized it. It is highly significant to note that in this letter Wingate *did not even mention* Stephenson's alleged proposal on wages without a contract, a subject matter very much in the spotlight at the hearing and in the Trial Examiner's Intermediate Report. The Petitioner in its brief even misstates the fact to be that "On January 10, Wingate wrote to Stephenson and reported that on the preceding day the union membership had unani-

mously voted to reject the pay raise *unaccompanied by a contract.*" (Emphasis added) (p. 8, Petitioner's brief). In the letter it was twice said that it was a "last and final" offer, and its finality was stressed by the statement that "Unless this is acceptable to Florida Citrus Canners Coop we have no alternative but to take action as we deem necessary to bring the issues to a conclusion." (II R. 547-548). It is more than interesting to note that on January 9, 1958, the union, through Teague, wrote Adams Packing Association, Inc. what Teague characterized as an "ultimatum" letter containing verbatim language found in the letter of January 10th to Stephenson. (III R. 56, 63). Similarly, see *National Labor Relations Board v. Minute Maid Corporation*, 283 F. 2d 705, 707 (5th cit. 1960).

Significantly, another severe freeze occurred on January 8th, 9th, and 10th which caused additional damage to the Florida citrus crop (II R. 425; III R. 56). Thus, having received the union's latest ultimatum on December 11th (it is to be remembered the letter was written on the 10th at the height of the second freeze), and being encountered with the second series of freezes, Respondent did not drop everything to write the union the "prompt answer" the latter had asked for in its January 10 letter. (II R. 548). For the first time in the history of the United States Weather Bureau, snow fell in the citrus belt of Florida on January 8 and 9, 1958 (III R. 57). Notwithstanding the very real emergency Respondent and the rest of the industry found themselves in, the Trial Examiner wrote:

> "*Having received no reply* to Wingate's letter after approximately a week, the union's negotiating committee called a strike for Friday, January 17 * * * " (Emphasis added). (I R. 102).

On the basis of this record, the Petitioner somehow still maintains that it was the *Respondent* who was exploiting the emergency created by the freezes; and yet, the union gave ultimatum after ultimatum and finally dealt a severe blow at a most critical time by striking.

Concerning Respondent's failure to answer the union's letter dated January 10, the court below stated:

> "It might have been courteous for the respondent to have complied with the union's request for a reply to its January 10th letter but it was not, we think, under any duty to do so. The respondent, after negotiations were terminated on December 18th, was under a duty to resume bargaining, but only if so requested by the union. * * * The letter of January 10th was not a request for the respondent to bargain, it was a 'take-it-or-leave-it' demand with the 'or else' threat incorporated. The attitude of the union that it was not willing to negotiate was implicit, if not fully expressed in its letter. The failure of the respondent to reply to such a letter is not, we conclude, a refusal to bargain nor evidence of such a refusal." (III R. 90).

* * *

On January 14, 1958, the union filed an unfair labor practice charge against the Respondent, the basis of which was that the Respondent had refused to bargain in good faith on or about December 18, 1957, and thereafter. An amended charge, filed after the strike, had as its basis a refusal to bargain in good faith on or about July 14, 1957, and thereafter, and that on January 19, 1958, and other dates, Respondent discharged

employees in violation of Section 8 (a) (3) of the Act (III R. 85).

* * *

On or about January 16, 1958, Respondent posted to its employees a letter (II R. 549) over the signature of Stephenson, in which the employees were advised that the union had rejected the wage increase, information was requested as to threats and intimidation by employees against other employees, a report on the effects of the freezes was given, and an offer was made to furnish information or answer questions concerning the general situation. The Trial Examiner concluded that "by its notice of January 16 [Respondent] cast upon the union the blame for the failure of the employees to receive the promised wage increase, and extended an invitation to all employees to apply to Stephenson for 'information.' " (I R. 112). Of course, the union was to be blamed. The court below stated: "The Examiner and the Board characterize the posted notice as 'inviting wrath upon the union' and as 'an incentive to a union defection.' We cannot see in the offer to provide information or answer questions concerning the general situation the insidious implications which are so apparent to the Examiner and the Board. The offer follows a brief discussion of the situation relating to the freezes and would naturally relate to them. A reference to the general situation would not normally be regarded as having to do with a specific wage proposal." (III R. 91).

* * *

On Friday, January 17, 1958, a strike was called by the union. Approximately 278 employees out of the 783 within the bargaining unit went out. *This number equals a little more than a third of the total.* Assuming

the strike was an economic strike, Respondent replaced and then discharged 274 of the strikers, including J. E. Holly. Respondent also evicted ten strikers from company-owned houses. The theory of the Petitioner is, of course, that this one-third complement struck in protest against Respondent's alleged refusal to bargain in good faith and the strike was an unfair labor practice strike from its inception (I R. 103, III R. 83).

On Saturday, January 18, 1958, Wingate of the union sent Respondent's Stephenson a wire expressing the union's readiness to meet "at any time day or night" in an attempt to settle the dispute (II R. 551). On Monday, January 20th, Stephenson replied by wire that the Respondent stood "ready to meet at any mutually convenient time" (II R. 552). That same day Wingate wired Stephenson that the "union is willing and available to meet at any time as previously stated when company is prepared to meet. *Please advise*" (Emphasis added). (II R. 553). On Tuesday, January 21st, Stephenson did advise by suggesting January 29th. The next day Wingate acknowledged but requested clarification of the time (II R. 555). The next day, Thursday, January 23rd, Stephenson wired Wingate advising that after further checking Respondent's commitments, it could meet a day earlier on January 28th; it asked for an acknowledgment (II R. 556). That same day Wingate wired back acknowledging the meeting for January 28, 1958 (II R. 557).

* * *

At the January 28th meeting, Wingate, although present, was replaced as the union spokesman by a representative of the international union, J. W. Morgan. A Tom Owens of the international was also present. Some time was spent in acquainting Morgan with the

prior negotiations. But actual negotiations started and progress was made and agreements were reached on some provisions on which the parties had formerly disagreed (I R. 103-104). Respondent's negotiator's position on arbitration provoked Morgan into exclaiming that this negotiator, attorney Bowden, was taking a particular position for the Respondent in order that he might make a fee. Bowden responded by stating that he had not, at least, taken the Fifth Amendment fifty-seven times before the McClellan Committee. The negotiator sent in by the Teamsters international denied that he had asserted his constitutional immunity fifty-seven times and stated that the correct number was fifty-four (II R. 355-356). The court below stated: "This unfortunate incident, precipitated by the union, resulted in an atmosphere of tension and created another inpasse. Further negotiations at this session were, of course, impossible and the meeting broke up. The respondent declined a request for a bargaining session on that night. Bargaining was not thereafter resumed. Neither party thereafter attempted to reopen the bargaining until after it appeared that the union had lost its majority. The union representatives testified that respondent's representatives had said they would contact them. The testimony is not sufficiently explicit to sustain a refusal to bargain charge for failure of the respondent to contact the union for a resumption of bargaining." (III R. 85) (See especially II R. 226 and 342).

* * *

In late January and early February, 1958, petitions (I R. 106) were circulated by employees for the withdrawing of authorization for representation by the union. The petitions stated "WE THE UNDER-

SIGNED EMPLOYEES OF FLA. CITRUS CANNERS COOP. DO NOT WANT THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS TO REPRESENT US IN ENY WAY. AND WE WISH TO EXCEPT PAY OFFER OF JAN 4 1958."

Employee Raymond E. Sherrer testified without contradiction that after he learned the union had rejected Respondent's wage offer, he stated to employee Clyde Lanier: "I think we had better circulate a petition and see how many of the employees feels the same as we do, see if they want the Teamsters to represent them or not." Sherrer further testified: "So we prepared the petition; the other man, he prepared it, and I circulated the petition, which we done it on our own. No one asked us to and no one asked us not to." (II R. 377-388). Sherrer testified that he got the idea of the petition from the newspaper's reports of petitions being circulated through other citrus companies (II R. 382). Contemporaneously, similar disavowal petitions were circulated at Adams Packing Association, Inc. (III R. 58) and at Minute Maid Corporation (283 F. 2d at 708).

At Respondent's plant the solicitations for signature on the petition were made, in part at least, during working hours. Sherrer testified that the petitions were circulated in similar fashion to charity collections (II R. 385). The petitions were signed by 593 employees or a percentage of 76.2 percent of the total number of 778 employees (I R. 111). The petitions were delivered to the Respondent on February 7, 1958.

On February 17, Respondent advised the union by letter (II R. 558) that it had received the petitions, and it was apparent that the union did not then represent a majority of the employees.

On February 20th, Respondent announced (II R. 533) the results of the petitions and the wage increase which it had previously offered, but which had been rejected by the union, would be put into effect retroactive to December 16, 1957. The court below disagreed with the Petitioner that this wage increase was illegal under the Act since it was not greater than was offered during collective bargaining and since the union had lost its representation of the bargaining unit (III R. 92).

On February 24th, after pondering Respondent's letter of February 17th for a full week, Wingate requested a meeting (II R. 570). The Respondent, through Stephenson, declined to meet unless the union was prepared to show that it then represented a majority. Stephenson stated in his letter dated March 5, 1958, that Respondent had "reasonable and adequate cause to question" the union's majority status. Stephenson then stated that if the union had evidence that they represented a majority, the Respondent would be glad to receive it for evaluation. (II R. 561). The certification year for the union ended on February 6, 1958. The union never tried to disprove Respondent's good faith doubt of its majority status.

In concluding that it was clear Respondent had not failed in its duty to bargain at the time of the strike nor on January 28, 1958, the court below held that the 274 strikers who had been replaced and discharged before requesting reinstatement are not entitled to reinstatement with backpay (III R. 90, 85).

The court below concluded that the determination by the Petitioner that the loss of the union's majority was attributable to unfair labor practices of the Re-

spondent is not supported by substantial evidence on the record as a whole (III R. 91).

The court below also concluded that the Respondent was not obligated to bargain with the union until the certification was rescinded in a new Board election, since the general rule does not require an employer to bargain with a union which has demonstrably lost its majority and where the filing of a petition for de-certification would be futile (III R. 92).

The Trial Examiner noted that the principal issues(was there a refusal to bargain and if so, when) made the remaining issues, in comparison, minor ones involving a "miscellany" of alleged interference, restraint, and coercion, and the alleged discrimination against certain tenant strikers through efforts at eviction (I R. 70). Relative to the latter, the court below held that the Respondent is entitled to the possession of the company-owned houses from which certain of the striking employees refused to move, as such employees had been lawfully replaced and discharged (III R. 90).

Relative to the "miscellany," the court below agreed with the Trial Examiner in his characterization of the "miscellany" as minor incidents insufficient to form the basis for an unfair labor practice case (III R. 93).

SUMMARY OF ARGUMENT

The Petitioner argues that the court below "grossly misapplied" the "substantial evidence" standard as explained in *Universal Camera Corporation v. National Labor Relations Board*, 340 U.S. 474 (1951). It reasons that the court below has misapprehended the "substantial evidence" standard because it set aside, indeed "reversed," findings of the Trial Examiner and

the Board concerning the credibility of the witnesses. The Petitioner argues not without merit that the trier of facts has the best opportunity to assess credibility since demeanor evidence has traditionally been considered a good guide in determining veracity, and the trier's credibility findings "must be accepted by a reviewing court 'unless on its face it is hopelessly incredible *** or flatly contradicts either a so-called "law of nature" or undisputed documentary testimony.'" (p. 17, Petitioner's brief.)

The Respondent might agree with this argument if the Petitioner would admit that Courts of Appeals should *never* have to accept credibility findings if such courts are of the firm belief that the trier did not possess the mandatory impartiality or used an improper basis in crediting witnesses. It must be remembered that in addition to believing the Trial Examiner had an improper attitude and approach, the court below found "sound reason" for not accepting the crediting of Holly (the Trial Examiner mentioned demeanor) and found substantial reasons to conclude that the Trial Examiner should have (but did not) "carefully scrutinized" the testimony of Wingate whose testimony was a mass of contradictions (the Trial Examiner did not even mention demeanor in crediting Wingate nor even make express findings concerning his credibility). (III R. 89).

Respondent contends that the *Universal Camera* standard in no wise conflicts with the judgment of the court below and submits that the Petitioner has failed to show how it does so conflict or how the standard was grossly misapplied.

The considerations and concern of the court below certai[illegible] are enough to refuse enforcement of Petition

er's order because of unsubstantiality; the opinion of the court below shows that there has been a careful and fair assessment of the record.

The Petitioner's second argument that the court below further erred in declining to sustain the Board's findings that Respondent has engaged in independent violations of Section 8 (a) (1) of the Act is untimely and not properly before this Court, since the question presented in the Petition does not cover this contention. The Petitioner is therefore raising an additional question, notwithstanding the clear meaning of Rule 40 (2) of the Revised Rules of this Court.

ARGUMENT

> "Whether on the record as a whole there is substantial evidence to support agency findings is a question which Congress has placed in the keeping of the Courts of Appeals." *Universal Camera Corporation v. National Labor Relations Board*, 340 U.S. 474, 491 (1951).

On March 27, 1961, the United States Court of Appeals for the Fifth Circuit rendered its unanimous Judgment (III R. 94) denying the Petition of the National Labor Relations Board for Enforcement of an Order of that Board made on October 14, 1959. The Petition for a writ of certiorari was filed by the Petitioner on May 17, 1961, and was granted on October 9, 1961 (III R. 96, 368 U.S. 812).

In the court below and in this Court, the Petitioner seeks enforcement of its Order which would require,

The carving out of a segment of a Labor Board record and stamping the segment "unreviewable" is but the beginning of the shackling of the reviewing function of our Courts of Appeals in Labor Board cases.

The Petitioner argues in its brief (p. 19) that the "the court [below]has made an even more basic incursion into the Board's factfinding function, by setting aside a Board Trial Examiner's resolutions of credibility which were not plainly unreasonable."

The court below simply could not accept the Board's Order since it was unsubstantiated. This is *not* a case where the Court of Appeals differs with the trier of facts as to who was and who was not telling the truth on conflicting testimony. This *is* a case where the record has caused the Court of Appeals to refuse to accept this Examiner's credibility resolutions. Thus, the court below did not, as the Petitioner contends, end up crediting those witnesses that the Examiner refused to credit. It did not have to do this in order to deny enforcement. It *disapproved* of the Examiner's theory, approach, and attitude in crediting witnesses. This was one of the reasons the court below could not grant the Order for which it was petitioned.

Moreover, the learned court below obviously thought that some of the Trial Examiner's credibility resolutions *were* "plainly unreasonable," notwithstanding the Petitioner's opinion to the contrary that such resolutions "were not plainly unreasonable."

Concerning the testimony of Holly, which was critical to the General Counsel's case, (see III R. 82) the court below obserevd:

> "The finding of an anti-union feeling is based entirely on the Holly testimony. All of the conduct

of the respondent was viewed in the light of such finding. *The Examiner's finding of a plan of the respondent not to bargain is dependent upon crediting Holly's testimony.* Inferences drawn against the respondent were supported by the assumption that its conduct was motivated by hostility to the union. It might be said that Stephenson, as a part of the respondent's management, was not a disinterested witness. But he was no more interested than Holly, who had gone on strike, had been replaced, and was [and is] hoping for reinstatement with back pay. Notwithstanding the absence of any prior anti-union animus or action of the respondent, and notwithstanding the improbability that the respondent's production manager would disclose its labor program and its plans for carrying out such program to a plant watchman [Holly], the Examiner believed Holly and disbelieved Stephenson. The Board adopted the Examiner's finding. *Sound reason, in this case, requires us to decline to go with the Examiner in crediting Holly and discrediting Stephenson.*" (Emphasis added) (III R. 89)

Thus, the court below not only was of the opinion that the Trial Examiner's crediting of Holly was "plainly unreasonable," it also was of the opinion that "the Examiner was of the belief that reliance may not be placed upon the testimony of a witness who is a part of the management of an employer in a controversy with a labor union." (III R. 88)

Consider the Trial Examiner's "carefully documented" resolution of the credibility of Holly:

"In resolving the credibility issues presented by

the foregoing testimony, the following points are significant:

[1] "Stephenson admitted the holding of the conversation and that it covered the subjects of a company union and the Company's contemplated wage offer. Though testifying that it was Holly who injected the company union question into the conversation, Stephenson refrained from testifying what his own response to the suggestion was.

[2] "Holly's long time employment, his long time connection with the former union, his absence of a position with Teamsters, and his criticism of that union, its representatives, and the negotiations obviously marked him as promising material to lead a defection movement.

[3] "Stephenson's promises and predictions, as Holly testified to them, later came through exactly as prophesied, save that the wage offer was posted a week earlier than Stephenson had indicated. Later developments, summarized *infra*, showed that Respondent assisted the movement to 'kick the Teamsters out,' which Holly's testimony showed that Stephenson was intent on sponsoring and assisting.

[4] "Finally, Holly was an impressive witness both on direct and on cross-examination, while Stephenson, in comparison, *sometimes* reflected on cross-examination a demeanor and manner of reluctance in testifying which prevented acceptance of his testimony at face value. Holly's testimony is therefore credited." (Emphasis added) (I R. 94).

The Trial Examiner's very first "significant"

point above seems to be totally insignificant. Stephenson did not "refrain" from anything; the General Counsel simply "refrained" from cross-examining Stephenson as thoroughly as the Trial Examiner might have. And the fact that Stephenson "admitted" the holding of the conversation cannot possibly be said to be probative to show that Holly is telling the truth.

The second "significant" point of the Trial Examiner contains elements that would be persuasive to argue that Holly would "obviously" *not* be "promising material to lead a defection movement." The Examiner accurately observed that Holly did not have a position with the Teamsters, but the Examiner failed to add that Holly was a member of the Teamsters and would thus be likely to remain loyal to his most recent union —loyal all the way through testifying in an unfair labor practice trial.

The obvious fallacy in the logic of "significant" point three is that the Trial Examiner believes that hindsight is a mark of credibility.

The first three "significant" points of the Examiner are actually insignificant points that do not withstand analysis. Appropriately, the Board recently had occasion to state:

> "We adopt the Trial Examiner's resolutions of credibility in this case only insofar as his findings are based upon his observation of the witnesses and their demeanor at the hearing. However, we do not adopt his analysis of the credibility of the witnesses to the extent such analysis appears to be based upon needless speculation as to the witnesses' conduct with respect to minor details." *Bryan Brothers Packing Company*, 129 N.L.R.B. 285 (1960).

In point four, the Trial Examiner's observation that Stephenson "sometimes reflected on cross-examination a demeanor and manner of reluctance in testifying which prevented acceptance of his testimony at face value" actually proves nothing in evaluating credibility, since it obviously does not matter how reluctantly a witness testifies if he tells the truth. Reluctance, especially on cross-examination, would reflect deliberation and weighing before answering under oath. Moreover, the fact that Stephenson "sometimes" revealed tale-telling demeanor evidence leads to the conclusion that at other times his demeanor apparently satisfied the Trial Examiner. The world is required to assume that the times the Trial Examiner spotted this demeanor evidence were the time Stephenson was being cross-examined on testimony which conflicted with Holly's. It is obvious from his Intermediate Report that the Trial Examiner's crediting of Holly is not bottomed upon his observation of Stephenson and the latter's demeanor, but upon irrational "speculation" of which the Board even disapproves. Respondent submits that this, too, is more evidence of the Trial Examiner's improper basis for crediting witnesses. For another of the Trial Examiner's "carefully documented" resolutions see I R. 97-99. (Wingate)

The Petitioner ardently argues that the court below erred in rejecting the Trial Examiner's "carefully documented resolutions of credibility." (Petitioner's brief, p. 22). Indeed, the Petitioner has erroneously argued in its brief (p. 14) the following point: "Concluding that 'the findings of the Examiner and the Board [were] dependent upon the acceptance of the testitmony of Messrs. Wingate and Holly rather than

the contradictory testimony of witnesses for the respondent,' the court reversed the Examiner's credibility resolutions on the ground that he had proceeded on an improper basis in deciding which witnesses to believe." What the court below actually said was: "To a considerable extent the findings of the Examiner and the Board are dependent upon the acceptance of the testimony of Messrs. Wingate and Holly rather than on the contradictory testimony of witnesses for the respondent." (III R. 86). Thus, the court below did not *conclude* what the Petitioner argues, and, most significantly, the court below did not state that its judgment in denying enforcement is based upon its disbelief of the testimony of Wingate or Holly or even its disapproval of the improper basis used for determining credibility.

Subsequent to the court below's above quotation, the court below carefully pointed out that the "Examiner's finding of a plan of the respondent not to bargain [in good faith] is dependent upon crediting Holly's testimony. Inferences drawn against the respondent were supported by the assumption that its conduct was motivated by hostility to the union." (III R. 89). This is absolutely correct; in essence the Petitioner's entire theory that Respondent refused to bargain in good faith (after the Trial Examiner admitted Respondent bargained in good faith for several months) (I R. 113) stems from the testimony of *one witness*. Even if the court below had been persuaded that Holly's testimony was not plainly improbable and the Trial Examiner had proceeded on a proper basis in determining credibility, it is patent from its opinion that the court below was not convinced as a matter of law that Respondent had refused to bargain in good faith. Granting the Petitioner everything it argues,

the Board still is left with a very unsubstantial record to argue that Respondent refused to bargain in good faith. The Trial Examiner's Intermediate Report can hardly convince the most objective reader. (I R. 66-144). For example, the Trial Examiner concluded the following concerning the December 18, 1957, meeting (the Trial Examiner and Board found that on and after this date the Respondent refused to bargain in good faith):

> "Its [Respondent's]failure to do so [plead for postponement of bargaining because of the emergency, i.e., the freeze of December 12] and its outright refusal to enter into discussions of any sort, in purported reliance on Wingate's threat [two hour ultimatum] constituted, *of course*, a refusal to bargain." (Emphasis added) (I R.114).

The court below, however, concluded otherwise than that Respondent had "of course" acted improperly or failed to act properly by not giving forth with a knee-on-the floor appeal after the union's ultimatum:

> "The Examiner and the Board reached the conclusion that Walker should have made his plea for suspension of negotiations, but we see no reason why he should have done so in view of Wingate's declaration that, freezes or no freezes, the respondent must, within two hours, commit itself to a contract. The doing of a useless and futile thing is no more required in collective bargaining between an employer and a labor union than in other activities. The Examiner and the Board reached the conclusion that, notwithstanding the uncertain effects of the freezes, the unwillingness of the union to consider or even hear a request for a

delay until the effects of the freezes could be appraised, the refusal of the union to consider the freezes in bargaining, and notwithstanding the union's demand for a contract or a guarantee of one within two hours, the respondent should have attempted to bargain." (III R. 80)

Thus, the court below concluded: "We think *it is clear* that the respondent had not failed in its duty to bargain at the time of the strike." (Empasis added) (III R. 90).

If the question before this Court was whether the "totality-of-conduct" test or the "*per se*" rule of good-faith bargaining under the Act should apply in the instant situation, Respondent submits that the former would be the only proper test to be applied. (See III R. 61). That is, whether the Respondent met its good-faith bargaining obligation under the Act must be determined on the basis of the "totality of its conduct" during the negotiations. *National Labor Relations Board v. Insurance Agents' International Union*, 361 U.S. 477 (1960). Considering the totality of both parties' conduct, Respondent submits that it was the Teamsters union, not the Respondent, who was guilty of bad-faith bargaining.

The Trial Examiner's and Petitioner's conclusion that Respondent exploited the emergency created by the freeze of December 12, 1957, and then deliberately framed a course of conduct to avoid bargaining, is simply a conclusion that ignores economic realities and the intolerable conduct of union negotiator Wingate and the conduct of the other Teamster's negotiators during this critical time. The *union* exploited the emergency created by the freezes in order to save a situation brought about by the *union's* maladroit bargaining.

The Petitioner has no where in its brief attempted to show how the court below "grossly misapplied" the standard of review laid down by this Court in *Universal Camera Corporation v. National Labor Relations Board*, 340 U. S. 474 (1951). Such case and standard, although both significant, do not attempt to deprive Courts of Appeals the right (and duty) to deny enforcement of Board Orders based on an Intermediate Report written by a Trial Examiner found to be using an improper attitude and approach. How can such a finding be said to be "grossly misapplying" the "substantial evidence" standard? It is not insignificant that the court below had before it the Intermediate Report (III R. 37) of another Trial Examiner who assessed quite differently the conduct of another citrus company under very similar circumstances and with the same union at the same period of time. See *Adams Packing Association, Inc.* (III R. 37) 44 L.R.R.M. 1571. A full appreciation of the Teamsters' behavior at this time can be had only by reading the latter case and *National Labor Relations Board v. Minute Maid Corporation*, 283 F. 2d 705 (5th Cir. 1960).

In *Universal Camera* this Court stated:

> "We conclude, therefore, the Administrative Procedure Act and the Taft-Hartley Act direct that courts must now assume more responsibility for the reasonableness *and fairness* of Labor Board decisions than some courts have shown in the past. Reviewing courts must be influenced by a feeling that they are not to abdicate the conventional judicial function. Congress has imposed on them responsibility for assuring that the Board keeps within reasonable grounds. That responsibility is not less real because it is limited to enforcing the

requirement that evidence appear substantial when viewed, on the record as a whole, by courts invested with the authority and enjoying the prestige of the Courts of Appeals. The Board's findings are entitled to respect; but they must nonetheless be set aside when the record before a Court of Appeals clearly precludes the Board's decision from being justified by a fair estimate of the worth of the testimony of witnesses or its informed judgment on matters within its special competence or both.

"From this it follows that enactment of these statutes does not require every court of appeals to alter its practice. Some—perhaps a majority—have always applied the attitude reflected in this legislation. To explore whether a particular court should or should not alter its practice would only divert attention from the application of the standard now prescribed to a futile inquiry into the nature of the test formerly used by a particular court.

"Our power to review the correctness of application of the present standard ought seldom to be called into action. *Whether on the record as a whole there is substantial evidence to support agency findings is a question which Congress has placed in the keeping of the Courts of Appeals.* This Court will intervene only in what ought to be the rare instance when the standard appears to have been misapprehended or grossly misapplied." (Emphasis added): 340 U.S. at 490.

It is axiomatic that the position of the Courts of Appeals is that of an appellate tribunal. Accordingly,

its function is to rule on the law. Section 10 (e) of the Act states that the Board's finding of fact shall be conclusive *if* they are supported by substantial evidence on the record as a whole. Whether they are so supported is a question of law for the Courts of Appeals to decide.

In *Universal Camera* this Court held that the Courts of Appeals are not bound by the Board's rejection of a trial examiner's findings since the record considered as a whole includes the Intermediate Report of the Examiner.

This Court pointed out that when the Board should disagree with the conclusions of the Trial Examiner that this would only indicate that the evidence supporting these conclusions might be less substantial than in the case where the Examiner and Board reach the same conclusions. This Court also stated that the "substantial evidence" standard is not modified in any way when the Board and its Examiner disagree. Then this Court stated: "*The findings of the examiner are to be considered along with the consistency and inherit probability of testimony.* The significance of his report, of course, depends largely on the importance of credibility in the particular case. To give it this significance does not seem to us materially more difficult than to heed the other factors which in sum determine whether evidence is 'substantial.' " (Emphasis added) 340 U. S. at 496.

It would follow that a reviewing court would find signs of unsubstantiality of the evidence and the conclusions of the Examiner if such court could not bring itself to either accept or have faith in the credibility resolutions of the Examiner, which resolutions might or might not be important to the General Counsel's

case. Respondent strongly contends that if credibility is of great importance to a particular case, then the Courts of Appeals must, under the "substantial evidence" standard, review and assess those credibility findings and the basis of those findings.

Why should the Board have this right to review and assess credibility findings and the basis of such findings of the Trial Examiner, and then the right (indeed, the duty) be denied the Courts of Appeals who manifestly must review and assess the entire record to determine substantiality? In a recent case the Board *reversed* the Trial Examiner's credibility findings regarding the General Counsel's witnesses and accorded no probative value to their testimony on direct examination regarding Section 8(a)(1) violation, where the testimony was contradicted on cross-examination. *Midstate Hauling Co., Inc.*, 129 N.L.R.B. 1150 (1961). The Board has also stated:

> "The General Counsel excepts, *inter alia*, to the Trial Examiner's finding that the Respondent had not discriminatorily discharged Lloyd Garten. The Trial Examiner based his finding primarily upon his credibility resolutions, and it is these resolutions which the General Counsel urges are erroneous. We find it unnecessary to pass upon the soundness of these credibility resolutions *since even if we were to credit the General Counsel's witnesses* we would find that the General Counsel had not sustained his burden of proving by a preponderance of the evidence that Garten had been discharged in violation of the Act." (Emphasis added). *Gross Telecasting, Inc.*, 129 N.L.R.B. 490 (1960).

Notwithstanding the clear implications and mean-

ing of such Board decisions as these just cited, the Petitioner states in the first sentence of its argument (p. 17, Petitioner's brief) that "The action of the court below in setting aside the major portion of the Board's order is contrary to the settled principles governing the resolution of credibility."

The Petitioner in its Petition and in its brief cries for this Court to admonish the court below "in substituting its judgment respecting the credibility of witnesses for that of the Trial Examiner and the Board * * * " (p. 28, Petitioner's brief). Of course, that is not exactly what occurred. Notwithstanding, the Petitioner has unjustly attempted to paint a picture of a meddling Court of Appeals. That this respected court below well knows, understands, and applies correct principles in this area, when reviewing cases that did not trigger its concern, is shown by statements from other decisions, both before and after its decision herein.

> "There was a wide cleavage between the story of respondent's witnesses and that related by the union representatives. That the recollection of some of the witnesses are faulty will not be questioned. *Nothing is here present calling for the application of any modification of the general rule that in such situations as the one before us, determination of questions of credibility are for the Board.* (Emphasis added). *National Labor Relations Board v. Gibbs Corporation, et al.*,—F.2d—, 49 L.R.R.M. 2340 (5th Cir. 1962).
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> * * *
>
> "Presented for our determination are questions as to whether substantial evidence supports the

> Board's findings. We are not called upon to resolve any novel questions of law. In many instances there is a sharp conflict between the testimony of an employee or former employee of the Newton Company and that of a representative of the company's management as to conversations had. The Trial Examiner has resolved these questions and, for the most part, the Board has followed the Examiner's findings. It is proper that we do likewise *in the absence of compelling reason.* That the Examiner has for the most part credited the testimony of employees and discredited that of management is not among the grounds that might justify our up-setting findings of fact in such situations." (Emphasis added). *National Labor Relations Board v. The Newton Company,* 236 F. 438, 443 (5th Cir. 1956).

It is apparent from its opinion that the court below found a very "compelling reason" to question the Trial Examiner's credibility findings in the instant case. Respondent respectfully submits that by so doing the court below did not misapply and, certainly, did not "grossly misapply" the standard of review laid down in the *Universal Camera* case.

The Petitioner's second argument that the court below further erred in declining to sustain the Board's findings that Respondent had engaged in independent violations of Section 8 (a) (1) of the Act is untimely and not properly before this Court. The Petitioner has raised additional questions by arguing the evidence; these additional questions were not presented to this Court in the Petition for a writ of certiorari. The Petitioner has thereby completely disregarded Rule 40(2) of the Revised Rules of this Court.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the judgment of the court below should be affirmed.

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By

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February, 1962